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A COMPARATIVE ANALYSIS OF THE APPLICATION OF THE PRINCIPLE OF SELF-DEFENCE IN NIGERIA AND AMERICA

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Abstract

With the rising spate of insecurity in Nigeria and all over the world, the task of defending dear life and properties has somewhat fallen on individuals hence the saying 'self-defence is the best form of defence'. Self-defence is one of the oldest defences since the inception of modern civilization. The Nigerian Constitution in Section 33(2)(a) allows the use of reasonable and rational force in the defence of oneself, others, or property from unlawful violence. Self-defence is based on legislation that permits individuals to counteract potentially harmful attacks from aggressors in situations they believe could result in severe injury or death. The Stand Your Ground laws obtainable and legalized in some states of United States of America, are laws which allows private individuals to use deadly force when defending themselves without retreating from a life-threatening situation. The doctrinal method of research was used in this article. This article examined the concept of self-defence in Nigeria, exploring its legal and constitutional framework while comparing the Stand Your Ground rules in America- the variations between both laws and any controversies surrounding their application. Ethical and legal dilemma surrounding the use of excessive force, weapon misuse and human rights violations were also explored in the work. The article concluded by emphasizing that there is the need for a review of the laws surrounding self-defence in Nigeria especially as it relates to the amount of force legally permissible when a threat to life is envisioned.

Keywords: Self-Defence, Stand Your Ground, Reasonable Force, America & Nigeria

1.1 Introduction

Self-defence has been established as a fundamental right that allows private individuals to protect themselves, their loved ones, their property (ies) from harm or threat. This has been stated by a scholar while expounding on the concept of crime thus:

> ...a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against

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> either his person, habitation or property. In these cases, he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended and if in a conflict between them, he happens to kill his attacker such killing is justifiable.[1]

This definition fits more with the Stand Your Ground laws as practiced in America than the laws regulating self-defence in Nigeria. In Nigeria, reasonable force is to be used in the defence of life or property and there is the duty to retreat once the fear of harm or threat passes. This inherent right to defend self is recognized and entrenched in the Constitution[2] and also recognized in the Criminal and Penal Code. Section 32 (3) of the Criminal Code provides as follows: *'A person is not criminally responsible for an act or omission if he does or omits to do the act when the act is reasonably necessary in order to resist actual and unlawful violence threatened to him or to another person in his presence'*.[3]

Sections 286-294 of the Criminal Code Act deals with self-defence. Section 286 permits using force necessary to defend against unlawful assault, provided the victim is not the instigator. Section 287 details conditions for defending property. Section 288-294 further elaborates on self-defence. In the North, the Penal Code in Sections 62-66 provide for self-defence. This is also called Private defence in the North. Sections 62-69 outline the parameters for the exercise of this right. The concept of self-defence is rooted in the ideology that individuals have a natural and instinctive right to preserve their life, liberty, property(ies) against unlawful violence or aggression. The importance of self-defence cannot be over emphasized particularly in our world where violence, unrest and unprovoked aggression are rife. It serves as a deterrent to potential instigators or aggressors as well as providing a sense of security to individuals and also maintains social order. The human eye lids even blink in 'self-defence' when it senses a foreign object about to enter the eyes. That is how important the notion of self-defence is.

Stand Your Ground laws in America are a set of statutes that permit individuals to use deadly force in self-defence without retreating from a threatening situation. There is a world of difference in its application with the laws obtainable in Nigeria. Had Sunday Jackson (the convicted Adamawa farmer) been an American, he would have been justified when he used deadly force to neutralize the threat posed to his life by the Fulani herdsman who attacked with some hailing and supporting its usage while others calling for a review of the laws so as to prevent wrongful use by some people who would want to take advantage of these laws and 'get back' at a person that they hold some sort of grievance against. This research work will examine the plea of self-defence as it applies in Nigeria and the Stand Your Ground Rules applicable in the United States with a view to understanding the legal implications of both defences.

1.2 Application of Self -Defence in Nigeria

The Court of Appeal in the case of *Ekpoudu v State*[4] defined self-defence as:

[1] Oldnall William Russell, *Russell on Crime* (11th edn, Stevens & Sons Ltd, London 1958) 491.
[2] Section 33(2)(a) of the 1999 Constitution (as amended).
[3] Section 32 (3) of the Criminal Code.
[4] [2021] LPELR 52826 CA

> 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 if he or she reasonably believes that the danger of bodily harm is imminent and that force is necessary to avoid the danger.

The above definition by the Appellate Court has the statutory backing of the Constitution under Section 33 (2)(a) and it provides:

> 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.

The provisions of the Constitution lend further credence to self-defence being an undeniable constitutional right afforded to every individual (provided it is exercised within the ambits of the law). This position was further buttressed by the Supreme Court in the case of *Uwaekweghinya v. The State*[5] where the Court held thus:

> 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. The defence of self-defence is a complete defence under the Criminal Code and the Penal Code, and a successful defence of self-defence leads to the discharge and acquittal of the accused person.

In *Akpan v State*[6], the Supreme Court in interpreting Section 286 of the Nigerian Criminal Code held:

> When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for him to use such force on the assailant as is reasonably necessary to make effectual defence against the assault. The force which may be used in such circumstances must not be intended, and should not be such as is likely to cause death or grievous harm. 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 defence even though such force may cause death or grievous harm.

[5] [2005] 9NWLR (prt.930) 25; [2005] 12 S.C 109.
[6] [1994] 9 NWLR (prt.368) 347.

The above dictum was cited with approval by the Court of Appeal in *Karimu v State*[7], where the court ruled that before the defence of self-defence can avail an accused or can lawfully be invoked, three fundamental principles must be met:

a. The defence can only be invoked against a person who is an assailant or an aggressor;
b. The person attacked or assaulted or threatened with violence by the assailant must be in actual fear or belief of reasonable apprehension of death or grievous harm;
c. The force used to repel the attack by the assailant must be proportionate to the force used in the attack.

The Penal Code under Section 59 provides that: '*Nothing is an offence which is done in the lawful exercise of private defence'*. This provision thus justifies the legal recognition of the right to self-defence under the Nigerian law. Thus, it decrees that whatever one does in order to protect his body or property from such act which constitutes a crime, will not be criminally responsible as it was done in the exercise of his right to self-defence. Section 60 of the Penal Code provides that subject to restrictions contained in the code, every person has a right to defend his own body, and the body of another person against any offence affecting the human body. One of the restrictions is that the right of private defence in no case extends to the infliction of more harm than is necessary to inflict for the purpose of defence.[8] Also, under Section 65 of the Penal Code, private defence may, in certain circumstances, extend to killing where the act being repelled is one of the following categories: (a) an attack which causes reasonable apprehension of death or causing grievous hurt; or (b) rape or assault with intent to gratify unnatural lust, or (c) abduction or kidnapping. The right of self-defence under the penal Code is principally provided under Section 59-67. Sec 60 establishes the right while section 61 and 62 qualify these rights and provides for the restrictions to the exercise of these rights. These provisions go hand in hand because the right of self-defence is not absolute. Sec 60 (a) creates the foundation for the exercise of the right of self-defence in Nigeria. It provides: '*Every person has a right, subject to the restrictions hereinafter contained, to defend his own body and the body of any other person against any offence affecting the human body'*. It recognizes that an individual has the right to use reasonable force to protect his life and bodily integrity as well as the life or body of another person. The phrase *subject to the restrictions hereinafter contained* is particularly significant because it makes the right conditional rather than unlimited. Consequently, the right must always be exercised within the limits prescribed by Sections 61, 62 and the subsequent provisions of the Penal Code. Section 61 emphasizes that the right of self-defence depends on the nature of the attack, not the legal responsibility of the attacker. For instance, a person attacked by an insane individual may lawfully protect himself and the victim is not expected to determine whether or not the aggressor possesses criminal capacity before defending himself. Although this section of the Penal Code broadens the persons against whom self-defence may be exercised, it does not remove the general limitations governing self-defence. Thus, only reasonable force may be used, excessive retaliation remains unlawful and the defender cannot rely on the attacker's incapacity to justify disproportionate

[7] [1989] CLR 1 SC.
[8] Fagbemi O. Alfred, 'An Examination of the Right of Self-Defence and Others in Nigeria', *Journal of Law, Policy and Globalization (2014) (28) 3*

violence. Section 62 embodies the doctrine of proportionality in the exercise of self-defence. The law distinguishes between defensive force which is lawful and retaliatory or revengeful force which is unlawful. For example, pushing away an assailant who attempts to hit a person is deemed lawful force but continuing to beat the same assailant when he has been subdued will then constitute unlawful force.

The case of *Sunday Jackson v The State*[9] which centered largely on the use of self-defence in Nigeria is one which drew widespread criticisms and disapproval of the decision of the Learned Justices of the Supreme Court when they affirmed the decisions of the Appellate and High Courts that sentenced the Appellant to death. The facts of the case are as follows. The Appellant, Sunday Jackson, was arraigned on a one-count charge of culpable homicide punishable with death contrary to Section 221(a) of the Penal Code CAP 98 Laws of Adamawa State 1997. On January 27, 2015, in a bush within the village area of Kodomti in Numan Local Government Area of Adamawa State, the Appellant was alleged to have caused the death of Ardo Bawuro by stabbing him twice on the neck, causing his death. The prosecution called two witnesses and tendered several exhibits, including the Appellant's confessional statements (Exhibits B1 and B2) and coroner reports (Exhibits A and B). The Appellant testified as the sole witness in his defence. According to the Appellant's confessional statement, he was cutting thatching grasses in the bush when the deceased attacked him after losing sight of some persons he was pursuing for allegedly killing his cattle. The deceased attacked the Appellant in frustration and tried to stab him with a dagger. During the ensuing struggle, the Appellant seized the dagger from the deceased and used it to stab him thrice on the throat, resulting in his death.

The trial Court rejected the Appellant's plea of self-defence, convicted him and sentenced him to death by hanging. The Court of Appeal affirmed the conviction and sentence, prompting the appeal to the Supreme Court. The Supreme Court held that the Appellant's defence of self-defence failed because, although he succeeded in disarming the deceased, he exceeded the bounds of self-defence by stabbing the deceased thrice on the throat, causing his death when there was no further imminent danger. The question arising from the decision of the Apex Court in this case is whether the Court was justified in its holding that the Appellant's plea of self-defence failed. It is in the humble opinion of the researcher that this finding is flawed. This is because the Appellant was not the aggressor in this instance, he was attacked and just as any reasonable man would, he defended himself because it was apparent that the assailant's aim was to cause fatal harm to him. Thus, it is trite that he satisfied one of the elements of self-defence. The amount of force used by the Appellant can be debatable because under the Stand Your Ground laws, his actions would not have led to prosecution because he was defending his 'castle' (a place where he had every right to be in). Given the fact that the rules in Nigeria does not recognize the Stand Your Ground laws as a form of defence in Nigeria, should the Appellant had stopped stabbing the deceased when he noticed he was no longer a threat? Yes, according to the judgment of the Apex Court reasonable and not necessarily deadly force should be used in defending oneself. Again, was the amount of force used by the Appellant to counter the attack reasonable and proportionate when subjectively placed on a scale to test if a reasonable

[9] [2025] LPELR- 80692.

man would have done the same thing? It is the opinion of the researcher that any reasonable man would have used such force on the assailant since his life was in danger. The fact that the Appellant and the deceased remained in close physical contact during the scuffle would have made it practically impossible for him (the appellant) to disengage himself without ensuring that the deceased was not going to be in a position to cause further harm to his person. There are instances whereby it is nearly impossible for the person to retreat before the use of force and it is opined that this is one of those instances. Section 222 (2) of the Penal Code of Adamawa State provides that where death occurs as a result of excessive force used in self-defence as long as it is in good faith, the appropriate charge should be manslaughter and not murder as was in this instant case. The Court should have taken into consideration the delicate nature of this case and the fact that the Appellant had no other choice; it was either kill or be killed. The dissenting judgement given in this case by Hon Justice Morenikeji Ogunwumiju (JSC) should have been more than just a 'small voice' in the background upholding the plea of self-defence in the Appellant's case. This matter as well as all the arguments seem to have been put to rest with the recent pardon granted Sunday Jackson by the Governor of Adamawa State on the 23rd of December 2025.

In construing the Nigerian Penal Code provisions on the right of private defence, the Supreme Court in *Kwagshir v State*[10] held that four cardinal conditions must exist before the taking of the life of a person is justified on the plea of self-defence. These are:

a. The accused must be free from fault in bringing about the encounter;
b. There must be present an impending peril to life or of great bodily harm real or so apparent as to create honest belief of an existing necessity;
c. There must be no safe or reasonable mode of escape by retreat;
d. There must have been a necessity for taking life.

1.3 **Elements that can Necessitate the Use of Self-defence in Nigeria**

The Supreme Court has held in *Rasheed Aminu v The State*[11] that for self-defence to be successfully proven, three (3) necessary elements must be conjunctively present at the time of violence, vis:

a) There must be reasonable apprehension of death or grievous harm;

b) It was necessary to use force at that time;

c) The force used by Defendant must be proportionate to the force used or imminently threatened against him and reasonable in the circumstances; all of which are discussed below:

a) There must be reasonable apprehension of death or grievous harm: perception of harm would ordinarily vary from person to person. For instance, Mr. A sees a haggard and

[10] [1995] 3 NWLR (prt.386) 651.
[11] [2020] 08 E-WRN/27 SC.

> unkempt man walking towards him. The man's eyes are bloodshot, he has a menacing scar over his eyes and he is dressed in black with a hoodie over his head. The man does nothing but just walks towards Mr. A, upon seeing him, Mr. A picks up stick lying on the ground to 'defend' himself in the event the man strikes (Mr. A is apprehensive and sees the man as a threat), whereas Mr. B upon seeing that same man, just walks past him with a shrug and thinks nothing of him except disdain for his appearance. In this scenario, there is a 'threatening presence' but there are different responses to that threat. The situation would be different in both cases if the man had aggressive shoved any of the two men and proceeded to threaten them with a knife. In which case, Mr. A would totally be reacting to a perceived reasonable apprehension of death or grievous harm if he proceeds to use the stick against the assailant and Mr. B would be allowed if upon perception of the treat, retreats from the assailant.

Thus, the person seeking to rely on self -defence must show that he experienced a reasonable apprehension for his life and he had no choice but to defend himself from the effect of that threat. 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*[12] where the Court held that self-defence requires proving reasonable apprehension of death/grievous harm, necessity to use force, proportionality of force used to the threat, and that the accused wasn't at fault for the fight and that the plea serves as a complete defence leading to acquittal if successful, but it fails if the accused uses excessive force or seeks revenge. Such person must understand what a reasonable person would have done if faced with such a 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 and not just an imaginative threat.

Using the example cited above about Mr. A and B, assuming Mr. A without any form of aggression from the unkempt man, picks up the stick and proceeds to hit the man, he cannot plead self-defence because even though the man's appearance would terrify any sane person, there was no form of threat or violence from him to warrant Mr. A to use the stick on him. His fears would then be dismissed as imaginative and he would be deemed by law to have assaulted an innocent man. By implication, there must be a justification that a reasonable person with the feelings and experience of immediate threat would use such force[13]. In the case of *Ojokokaiye v State*[14], the appellant was denied the plea of self-defence since at the moment of firing his gun he was not in an imminent danger or threat. The Court held:

> From the totality of evidence it is manifest that the life of the appellant was not in danger of an attack by the deceased. The crux of the dispute was the unyielding determination of the appellant to receive the pistol from the deceased who had not shown the tendency or intention to fire it on the appellant, therefore at the time the appellant fatally shot the deceased on

[12] [2020] LPELR -50919 CA.
[13] Felix E. Egwu, 'Understanding the Concept of Self-Defence under Nigerian Law' *Lawrit Journal of Law* (2024) (3) (1) 7.
[14] [2015] LPELR -25942 CA.

> the stomach with his AK 47 rifle, the deceased had posed no threat to the appellant's life, nor any threat to cause the appellant grievous bodily harm, nor did the deceased's conduct call for the necessity to take the deceased's life; the defence of self-defence could not have availed the appellant.

b) It was necessary to use force at the time: it is imperative to note that the person relying on this plea must reasonably believe that it was necessary to use force at the time of the unprovoked attack. Self-defence is a legal justification that permits a person to use a reasonable and proportional amount of force to protect themselves from imminent harm. For a self-defence claim to be valid, two elements must be present. First, the person must have a reasonable belief that they are facing an immediate threat of unlawful force. Second, the force used in response must be proportional to the threat faced; deadly force is only justifiable in response to a threat of death or great bodily harm. An element of self-defence in many jurisdictions is the duty to retreat. This principle requires a person to withdraw from a dangerous situation if they can do so with complete safety before resorting to deadly force. This obligation is rooted in the idea that violence should be a last resort. Where it is impracticable to retreat, reasonable force should be used.

In the case of *Silas Sule v The* State[15] ,the Court held that the evidence led by the accused that it was the deceased who first attempted to stab him with a knife was clearly an afterthought and the plea of self-defence would not avail him. What is the position if the response is not in fact necessary, but the defendant genuinely believes he is about to be attacked. Under the Nigerian Criminal Code, the test of reasonableness of belief is objective. In *R v Onyemaizu*[16],it was held that the defence is not open to an abnormally nervous or excitable person who, on being assailed by a comparatively minor assault, or an assault of any nature which falls short of that which is described in Section 286 of the Criminal Code, unreasonably believes that he is in danger of death or grievous harm. Under the Nigerian and Indian Penal Codes, the test is subjective. It was held in *Kwagshir v State*[17] that one of the cardinal conditions of the plea of self-defence laid down by the court is that there must be present an impending peril, to life or of great bodily harm, either real or so apparent as to create honest belief of an existing necessity. The subjective approach in determining the necessity of the accused person's action is to be preferred because if a court were to rely wholly on the belief of a "reasonable man" to the exclusion of the accused person's mistaken and honest belief of the facts, a lot of questionable decisions would be arrived at where the person who ought not to be found guilty of murder will be convicted[18]. Thus, a plea of self- defence under this factor would be unsuccessful if it is seen that the threat has abated before the person retaliated with such force.

c) Proportionate force: this element supports the balance of proportionality in self- defence. The person relying on the plea of self-defence must prove that the force employed in the face of threat or violence is proportionate to the force used against him. Where the force used by the assailant is non-deadly, it would be wrong for the victim to reciprocate with

[15] [2002] 7 NWLR (prt.1169) 33.
[16] [1958] NRNLR 93.
[17] Kwashigir v State.
[18] Fagbemi (n.8) 3.

deadly force. For instance, a plea of self-defence would be considered unsuccessful, when a person stabs the attacker who intends a slap[19]. Such an instance is deemed not proportionate and is bound to fail if raised in Court.

The Supreme Court in the case of *George v State*[20], set out the parameters for measuring proportionality. The court held that: *'Proportionality can be determined by the nature of the weapon used in retaliation, and the obvious disparity in the relative physical strength of the parties.*' In determining proportionality, the weapon used by the assailant and to an extent, his physical strength would determine the force to be used by the victim. For instance, a 6foot tall, well-muscled man, armed with a gun (his intention is to use that gun) attacks a passerby, it would not be out of place for the passerby to use his gun (if he also has one) to defend himself against the violence posed by the assailant. Section 298 of the Nigerian Criminal Code which codifies the concept of excessive force is somewhat vague. It provides: *'Any person authorized by law to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess'.*

The lacuna in the above section of the Criminal Code is in not stating what liability lies to an accused who by making an error of judgment, uses force in excess of what could be reasonably necessary for his defence. It is clear that the Courts have followed the English common law rule that an excessive use of force would defeat a plea of self-defence[21]. In the case of *State v Emmunu*[22], the accused shot and killed the deceased whose action, by putting his hand in his pocket frightened him, the court rejected the plea of self-defence on the ground that the accused's action was unwarranted in the circumstances. The approach adopted under the Nigerian Penal Code is quite a departure from that of the Criminal Code. Under the Penal Code, killing occasioned by the use of excessive force in private defence is manslaughter only, not murder. Section 222 (2) of the Penal Code provides as follows: '*Culpable homicide is not punishable with death if the offender in the exercise (in good faith) of the right of private defence exceeds the powers given to him and causes death'.*Other elements that must be established include:

a) Duty to retreat: the fact that the victim is expected to retreat from the imminent threat, force or violence is one of the most controversial elements of self-defence. The law provides that if it is possible to escape from the attack by retreating, then it is unnecessary to use deadly force. The English common law used to adopt a strict approach that a retreat to the wall was required before extreme force could be justified. The basis for this ideology is to establish a continuing act of assault or aggression, if it ceased upon the retreat or continued even after the retreat[23]. Under the Nigerian Penal Code, there is no requirement for retreat.

b) The victim must not be the aggressor: for a successful plea of self defence, the evidence led must show that the person who pleads such is innocent of instigating or initiating the violence and rather was defending himself from harm. However, this is not to say that there

[19] Felix (n.13) 7.
[20] [1993] LPELR – 1320 SC.
[21] Fagbemi (n. 8) 4.
[22] [1968] NWLR 15.
[23] Alphonsus Okoh Alubo, *Modern Nigerian Criminal Law: Materials, Cases and Comparative Studies (*3rd edn University of Jos Press, Jos 2018) 137.

are no instances in which a person may lose said innocence. The plea of self-defence would be unsuccessful when it is found that the person pleading started the violence or is deemed to be the aggressor.

1.4 **Application of Self-defence in America**

Self-defence in America is somewhat different in scope and application from what is obtainable in Nigeria. In America, self-defence laws are referred to as 'Stand Your Ground Laws' and these are a set of statutes that permit individuals to use deadly force in the act of self-defence without retreating from a threatening situation. This law is sometimes called 'line in the sand' or 'no duty to retreat law'. In essence, there is no duty to retreat if you are in a place, you are lawfully allowed to be in and as such, it is permissible to use deadly force to prevent bodily harm. These laws originated in Florida on the 1st of October 2005[24] and have since spread to over 30 States[25]. Before 2005 in Florida, Americans were expected to retreat in the face of imminent danger and use reasonable force to prevent bodily harm but with the Stand Your Ground laws, they can meet force with even deadly force. The duty to retreat derives from traditional English common law, which sought to produce a society of civility and retain control of quarrels between individuals[26]. In a threatening situation, one who sought to claim justifiable homicide had to prove both that he had retreated 'to the wall' and that the homicide was necessary in order to prevent his own death or serious [bodily] injury. In 1876 Ohio, the 'true man' ethics emerged when James W. Erwin claimed self-defence after killing his son-in-law during a dispute over who had possession of a shed located between their homes[27]. In this case, the deceased approached Erwin with an axe on his shoulder in a threatening manner. Erwin warned him not to enter and, when the son-in-law ignored the warning and approached, he fatally shot him. He was convicted of murder in the second degree, and he appealed his conviction. On appeal, he claimed that the lower court erred in instructing the jury as to the law of self-defence. More specifically, Erwin argued that the court should not have followed the doctrine of retreating to the wall. The Supreme Court of Ohio held that:

> The law, out of tenderness for human life and the frailties of human nature, will not permit the taking of it to repel a mere trespass, or even to save life, where the assault is provoked; but a true man, who is without fault, is not obliged to fly from an assailant, who, by violence or surprise, maliciously seeks to take his life or do him enormous bodily harm.

Thus, the court rejected the concept of a duty to retreat and instead focused on the necessity of the act in question; that is, whether the defendant, a non-aggressor who was attacked, acted with the necessity of taking life to save his own upon him[28]. In *Runyan v State*[29]

[24] http://election.dos.state.fl.us/laws/05laws/ch_2005-027.pdf. Act effective 1 Oct. 2005, ch 2005-27 Fla Laws 1. Accessed 17th February, 2026.
[25] Ibid.
[26] Bird Mervyn Richard, 'No Duty to Retreat: Violence and Values in American History and Society', (Oxford University Press, Oxford 1991) 4-5.
[27] Erwin v State [1876] 29 Ohio St. 186-193.
[28] Michelle Jaffe, 'Up in Arms Over Florida's New 'Stand Your Ground' Law, *Nova Law Review* (2005) (3) (1) 161.
[29] [1877] 57 Ind. 80

the Supreme Court of Indiana focused on what it called the 'American mind'. The court held that: *'When a person, being without fault and in a place where he has a right to be, is violently assaulted, he may, without retreating, repel force by force, and if, in the reasonable exercise of his right of self-defence, his assailant is killed, he is justifiable'.*

The above cases are a precursor to the duty not to retreat as entrenched in the Stand Your Ground laws. Before now, the penalty for using deadly force in self-defence would be manslaughter but with the Stand Your Ground laws, it is an absolute defence in that an individual is not expected to retreat from a dangerous situation before protecting themselves. Florida's self-defence law, before the new Stand Your Ground law was enacted, was a combination of statutory and common law[30]. A person was justified in the use of deadly force in self-defence if he reasonably believed that such force was necessary to prevent imminent death or great bodily harm. While the statute said nothing about a duty to retreat, Florida common law established the duty to 'retreat to the wall' when one is attacked in a place outside of one's home[31]. It is against the backdrop that law-abiding people should be able to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in self-defence. Under the common-law 'castle doctrine' which states that a person's home is his or her castle, the Florida State Constitution guarantees the right of the people to bear arms in defence of themselves.

The Castle Doctrine is a legal principle more specific than Stand Your Ground laws. It establishes that a person's home is their 'castle' and as such, there is no obligation to retreat when an individual is faced with an intruder inside their residence[32]. This doctrine is based on the idea that a person should not be forced to flee from their own home. Some jurisdictions have expanded upon this doctrine and have said it includes a person's vehicle or workplace. In these locations, an individual has the right to use defensive force, including deadly force, against someone who unlawfully and forcefully enters. The parameters of the Castle Doctrine do not however extend to public places[33].This legal concept is older and more widely accepted than most Stand Your Ground laws. It operates as a specific exception to the duty to retreat, but only within the defined "castle" areas. It provides a legal presumption that if an intruder is in your home, you have a reasonable fear of harm.

1.5 Legal Requirements for Stand Your Ground Claims

At its core, Stand Your Ground laws eliminate the duty to retreat before using force in self-defence, thus, changing how such defences are interpreted in the court of law[34]. There are some specific criteria an individual is expected to meet in order to claim a successful Stand Your Ground defence and they include:

[30] Ibid.
[31] Ibid.
[32] www.legalclarity.org/Stand Your Ground Rules vs Self-Defence: What's the difference? Accessed 8th March, 2026.
[33] Ibid.
[34] www.thedefencefirm.com/The Impact of Stand Your Ground Laws on Self-defence Claims in Assault Cases. Accessed 9th March, 2026.

a) **There must be a reasonable belief of threat**: the individual must have reasonably believed that using deadly force was necessary to prevent imminent threat or violence to his person
b) **Lawful Presence**: the individual must have been lawfully permitted to be in the place and must not be engaged in illegal activity.
c) **There must be no duty to retreat**: unlike traditional self-defence laws where an individual is required to retreat, if possible, Stand Your Ground laws remove this requirement. The individual is expected to stand and defend his territory.

Fulfilling these criteria enables an individual to lay claims that his actions were done in self-defence, potentially providing immunity from prosecution and conviction. Section 776.013 of the Florida Laws[35] provides:

> a) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:
>
> (i) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and
>
> (ii) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

1.6 Impact of the Stand Your Ground Laws

Stand Your Ground laws are most often referred to as 'shoot first' laws by its opponents in the United States. There have been arguments to the fact that Florida's law makes it potentially more difficult to prosecute cases against individuals who commit a crime and claim self-defence[36]. The law gained notoriety nationwide when 17year old Trayvon Martin was shot and killed in Sanford Florida in 2012. Martin had accompanied his father to visit his father's fiancée at her townhouse in Sanford. On the evening of February 26th 2012, Martin was walking back to the fiancée's house from a nearby convenience store. George Zimmerman, a member of the community watch, saw Martin and reported him to the Sanford Police as suspicious. Zimmerman pursued Martin despite the dispatch officer telling him there was no need to so. Several minutes later, an altercation happened and Zimmerman fatally shot Martin in the chest. He said he shot Martin in self-defence and was not charged at the time. The police said there was no evidence to refute his claim of self-defence, and Florida's Stand Your Ground laws prohibited them from arresting or charging him. After national media focused on the

[35] CH. 2005-27, 1, 2005 Fla. Home Protection: Use of Deadly Force- Presumption of Fear of Death or Great Bodily Harm.
[36] Ibid.

incident, Zimmerman was eventually charged and tried, but a jury acquitted him of second - degree murder[37].

There was a public outcry against the 'racial undertone' of the said killing especially when the aggressor George Zimmerman was found not guilty of the crime. As a response to the somewhat 'reckless' use of the Stand Your Ground laws by some people, in 2014, Florida's legislature considered a bill that would allow people to show a gun or fire a warning shot during a confrontation without drawing a lengthy prison sentence[38]. A Texas A &M University study found that when whites use the stand-your-ground defence against black attackers they are more successful than when blacks use the defence against white attackers[39]. On the statistical front, studies have shown that states with Stand Your Ground laws experience an increase in both homicides and firearm-related deaths[40].An analysis conducted between 2000 and 2016 revealed that the Stand Your Ground laws were associated with an 8% to 11% increase in national homicide rates with the statistics suggesting that while these laws might encourage the use of lawful self-defence, on the flip side, they could also inadvertently promote a lethal escalation in conflicts that might have otherwise been resolved non-fatally[41]. Surprisingly, nearly 60% of individuals making self-defence claims under these laws have a criminal history as was with the case of George Zimmerman who was arrested in the past for assaulting a law enforcement officer with a restraining order for domestic violence[42]. It is therefore clear that the Stand Your Ground laws remain contentious with ongoing discussions on their impact on justice, fairness and community safety.

The following are some of the differences between Stand Your Ground Laws and Self-defence Laws:

1. Duty to Retreat: in Nigeria, the laws governing self-defence generally require an individual to retreat, if possible, before using force. Under Stand Your Ground laws, this obligation is jettisoned and the individual is expected to stand and defend himself.
2. Location: self-defence laws often apply primarily within one's home (also known as the Castle Doctrine) while Stand Your Ground laws extend this protection to public places.
3. Immunity: Stand Your Ground laws avail individuals' immunity from criminal prosecution and civil suits if they claim self-defence where deadly force is used in the course of protection of life or property from harm. Under self-defence, immunity is not guaranteed where excessive force is used in the protection of life or property.
4. There must be the presumption of reasonableness: under the Stand Your Ground laws, the use of force is often presumed reasonable if a person believes it necessary to prevent

[37] https://www.npr.org/sections/thetwo-way/2015/02/24/388739549/feds-close-investigation-against-george-zimmerman-without-pressing-charges.Accessed 9th March, 2026.
[38] Madison Fair, 'Dare Defend: Standing for Stand Your Ground Law', *Law and Psychology Review* (2014) (1) 38.
[39] Patrik Jonsson, 'Racial Bias and Stand Your Ground Laws: What the Data Show', *Christian Science Monitor* (2013).
[40] (n.38)
[41] Ibid.
[42] Alubo (n.23) 146.

serious harm or death without taking into consideration the obligation to retreat. This is not the case with self-defence.

The following are the similarities between Self-Defence in Nigeria and Stand Your Ground Laws in America:

a. Both jurisdictions recognize the core principle of the right to life and bodily integrity. Both legal systems draw from the same foundation which is that every individual has the right to defend themselves from unlawful attack.
b. Both jurisdictions allow the use of force when there is an imminent threat of unlawful violence. The threat must be immediate and not past.
c. Both jurisdictions require that the force used be proportional to the threat faced. In Nigeria, the force must be reasonably necessary to repel the attack while in America, use of deadly force is allowed if the victim reasonably believes that it is necessary to prevent imminent death or great bodily harm.
d. In both jurisdictions, once the defendant raises self-defence, the prosecution must prove beyond reasonable doubt that the act of the defendant was not self-defence.

1.7 Conclusion

Though practiced in two different countries and jurisdictions, the Stand Your Ground laws and Self-defence plea in Nigeria are similar in their intent for use- the ultimate protection of life and property against imminent threat or danger. Self-defence is an important right of an individual and this right enjoys constitutional backing which allows a person to prioritise his life when faced with any imminent threat of death, grievous harm or loss of peaceful possession of property, and not an opportunity to take laws into one's hands. It is a well-established legal justification that balances the fundamental right to life with the need to preserve public order. The Constitution provides the legal framework and guidance on the use of reasonable force, the proportionality of the force to be used and the absence of aggression. Stand Your Ground laws have significantly shaped the landscape of self-defence claims in assault and murder cases. These laws extend the boundary of lawful self-defence, often allowing individuals to assert their right to protect themselves without the duty to retreat. These laws affirm the right to personal security and can deter crime to an extent because the mere knowledge that potential victims can respond with lethal force can discourage violent offences. It is therefore imperative to consider the broader societal impact and the ongoing debate over the effectiveness and fairness of these laws. This understanding can better steer more informed discussions and decisions about the future of Stand Your Ground laws. Ultimately, both the Self-Defense laws and Stand Your Ground laws represent a policy choice of prioritizing the rights of law-abiding citizens to defend themselves over the obligation to withdraw.

This work arrived at the following findings:

a) The existing laws governing the use and exercise of self-defence in Nigeria is obsolete and does not meet up with those of the developed world. For instance, rather than defend one's castle with excessive force especially when there is imminent threat to life, our laws

advocate for the use of reasonable force and where the force used is deemed excessive, the victim will then bear the brunt of the law. Thus, it is imperative that our laws are reviewed to allow use of lethal force where necessary as it is obtainable in America.

b) There is also the issue of citizens awareness of the doctrine of self-defence and its application. It is unfortunate that most people do not have a clear understanding of the doctrine of self-defence and how to use it in accordance with the provisions of the law. Self-defence in Nigeria is not a license for violence but a limited legal shield that reflects the law's recognition that individuals have the primary responsibility to protect themselves in moments of danger and people need to be aware of these laws.
c) While the proponents of Stand Your Ground Laws argue that the laws empower law-abiding citizens to safeguard themselves, its critics highlight the potential for misuse and disproportionate impacts on marginalized communities.

This work recommends as follows:

1. Nigerian legislators can borrow a leaf from the United States of America especially as it relates to the legal application of Self-Defence laws. Nigerians should be allowed to use deadly force (where necessary) to protect their 'castle' from imminent threat or harm and there should be no repercussions (as long as the laid down procedures are followed).
2. Citizens should be well sensitized about the scope and application of the plea of self-defence. It is important that individuals know that you cannot be the aggressor or instigator in a situation and turn around to say you acted in self-defence. He who comes to equity must come with clean hands.
3. It is imperative to change the narrative that the Stand Your Ground laws have caused a sharp increase in gun violence and racial disparities. This can be done by balancing out the ratio of convictions against white people found guilty of using these laws to get back at some people they have grievances against.