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IS THE RIGHT TO LIFE GUARANTEED UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) PROTECTED?

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ABSTRACT

The right to life is universally acknowledged as the most fundamental of all human rights, it forms the bedrock upon which all other rights stand. Under the Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 33 expressly guarantees the right to life. However, the extent and effectiveness of this protection remain contentious in the Nigerian socio-political realities, judicial interpretations, and the frequent violations of the right by state and non-state actors. It is upon the above background, this paper critically examined whether the constitutional guarantee of the right to life in Nigeria is adequately protected in practice. A doctrinal method of research was adopted, where both primary and secondary sources were consulted, employing content analysis of constitutional provision, judicial interpretation, and comparative analysis with other jurisdictions. Having explored the scope of the rights as enshrined in the Constitution, including permissible limitations such as death penalty. It found among other things that while the constitutional guarantee exists in theory, systematic failures, institutional weaknesses, and a lack of accountability mechanisms continue to undermine its protection. It is hereby recommended among other things to enhance the enforceability and practical realization of the right to life in Nigeria.

Keywords: Right to life, Constitution of Nigeria 1999, Fundamental Rights, and Protection.

1.1. INTRODUCTION

After more than 15 (Fifteen) years of unbroken military rule, democratic governance was restored in Nigeria on 29th May, 1999, which came with the promise of protection of fundamental human rights and freedoms. The rights are for the citizens of the country and access to economic opportunities and political participation as cardinal principles of democracy. Fundamentally, the Constitution of the

[202] Cap C23, Laws of Federation of Nigeria, 2004

Federal Republic of Nigeria 1999[203] has provisions which guarantee and ensure the safety and protection of Nigerians and their human rights. These rights include but not limited to right to life, dignity of human person, freedom from unlawful imprisonment, torture, expression, association, conscience, and religion. The Rights enshrined in Chapter IV of the 1999 Nigerian Constitution. These rights, ante date civil government and as such serve as morally valid limitations on the power of government, which primarily exists to safeguard those rights. This proposition has judicial assent in the case of *Ransome Kuti v AG Federation*[204] where Supreme Court of Nigeria held that "it is a right which stands above the ordinary laws of the land, and is antecedent to the political society itself. It is a primary condition for the civilized existence."

The right to life is the most basic right known to mankind, since no other right can be enjoyed without it. If one is arbitrarily deprived of this right, all other rights would become illusory.[205] However, despite the fact the right to life has been constitutionally guaranteed within the country. The continuous and gross abuse, deprivation and violation of right to life of Nigerians on daily basis is alarming. This is because security challenges such as activities of Boko haram members, incessant herdsmen attacks on different communities in the country, activities of kidnappers and armed bandits neutralize the rights. In the same development, corrupt practices in public offices, as well as abuse of power by police officers, Nigerian armed forces and other security personnel without being held responsible or accountable for, are also factors affecting the right to life in Nigeria. Corruption and unfavourable government policies is a plague, that has a wide range of corrosive effects on the country and leaves many citizens suffering from malnutrition, food access inequality, homelessness, inadequate shelter, unclean water and other factors affecting the quality of life in the country which lead to a poser: To what extent is the right to life guaranteed under 1999 Constitution of Nigeria (as amended) effectively protected in law and in practice? It is upon this background the objective of this paper appraised the extent to which the right to life is provided, guaranteed and protected in Nigeria. In achieving the objective, the paper adopted a doctrinal method of research, where both primary and secondary sources were consulted, and employed content analysis of constitutional provisions, judicial interpretation, and comparative analysis with other jurisdictions.

[203] [1985] 8 NWLR, 623

[204] DD Korfe, 'The Right to Life: A Guide to the Implementation of Article 2 of the European Convention on Human Rights' [2012], (8), Human Rights Handbooks, 6, <http://www.echr.coe.int/LibraryDocs/HR%20handbooks/handbook08_en.pdf> Accessed 26th November 2024

[205] Cap C23 Laws of Federation of Nigeria 2004

The paper is divided into five parts, apart from the introduction; part two discussed the right to life provided under the 1999 Nigerian Constitution; part three discussed what the writer referred to as right to life implied in other rights; part four examined the extent of right to life in Nigeria; and part five concluded the paper by stating its findings and recommendations.

1.2. THE RIGHT TO LIFE UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED)

The right to life is the first fundamental right provided for in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (CFRN).[206] It's specifically provided in Section 33 as follows:

(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 at 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 forces 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 to or to prevent the escape of a person lawfully detained; or
    (c) For the purpose of suppressing a riot insurrection or mutiny.

Section 33 of the CFRN confers right to life on every person, the section first declares that "*every person has a right to life"* and then it provides that "*no person shall be deprived of his life intentionally except as provided in the section*." In the case of *Amoshina v State*[207], the Supreme Court of Nigeria reiterated that the sanity of human life is constitutionally and judicially recognized unless life is taken in pursuance of legitimate process. The word "*life*" is very wide in its meaning; it may range from a spiritual life to temporal life, from animal life to human life. Life is enjoyed through various means, organs, and limbs God has given to man. Taking away certain limbs from a person's physical existence, life to him will be meaningless or not worth living. For instance, cutting-off of ears, eyes, legs, hands etc., will reduce the value and significance of life to the man. Therefore, it is the view of the writer that when S. 33 provides that *"no one shall be deprived intentionally of his life.",* the prohibition is not restricted to the taking away of the life completely; the prohibition extends to all limbs and organs of human body through which the life is enjoyed. The section provides that *"every person has a right*

[206] [2011] All FWLR (Pt 597) 601 @ 618; See Also *Ogwuche v FRN & Ors* [2020] LCN/4940 (SC).
[207] This is what the writer shall refer to as the traditional approach to the right to life in this paper.

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". From this provision, two core elements could be extracted: *"every person has a right to life"* and *"no one shall be deprived intentionally of his life"*. These two elements opened variety of instances of actions that may properly fall within the section, if it is realised that the elements yield to both conjunctive and disjunctive interpretation and application. When read conjunctively, there is the danger of the latter element overshadowing the former and thus, yielding to an understanding that the right to life is violated only if there has been an arbitrary deprivation of life. In consequence the full realisation of the 'right to life' which is actually the subject-matter of the provision is conditioned by the understanding that the remedies of the section arise only within the incident of unlawful deprivation of life.[208] This is more so, as *"unintentional*" deprivation of life arising from acts or omissions which have the potentiality to cause death may outweigh what may properly be termed "intentional deprivation of death". On the other hand, a realisation, that the provision *"every person has a right to life"* can stand by itself and sustain a cause of action even before death occurs. This position gives a modern understanding that enables the provision to protect life as well as provide remedies for the arbitrary deprivation of life. The right to life would be meaningless, if it is only relevant to a life that has been deprived.

The content of the right to life cannot be pinned to one easily delineated sphere; it encompasses a wide variety of other rights which are dependent on the existence of life for their enjoyment; it is the center of all other rights. The traditional approach to the right to life views the right in a very narrow sense to cover only occasions where the government was directly involved in the arbitrary deprivation of life. As a corollary, the government is not liable for a breach of the right to life for death caused by the failure of the government to protect life. This approach equates the right with the right to compensation for unlawful deprivation of life. Following this approach, the right to life becomes actionable in court only upon the occurrence of death. In other words, litigants cannot go to court to enforce the right to life while they are still alive. This is the category of *Nasiru Bello v AG Oyo State.*[209] In this case, a convicted felon was executed by the respondent while his appeal to a higher court was pending. At the suit of the deceased family, the Supreme Court of Nigeria held that the respondent violated the deceased right to life and ordered compensation to his family.

[208] [1986] 5 NWLR (Pt 45) 828
[209] Application No 50385/99

More so, in many ways, there has been a movement away from this traditional approach to a more liberal and expansive approach that does not consider the breach of the right in terms of the occurrence of death. A few cases buttressed this point, in *Makaratis v Greece*[210], the European Court of Human Rights held that the use of a potentially lethal force against the applicant by the police was a violation of his right to life, notwithstanding that he survived the injuries, the Greek government was liable. Also, in *World Organisation Against Torture, Lawyers' Committee for Human Rights, Jehovah Witnesses, Inter-African Union for Human Rights /Zaire*[211], the African Commission on Human Rights declared that arbitrary arrests, detention, and torture are violations of the right to life in Article 4 of the African Charter on Human and Peoples Rights.[212] It has been held that the Turkish government was in breach of the right to life of the deceased for failure to effectively investigate the cause of death. [213]

Furthermore, the traditional approach, which is applied most in Nigeria, views the right to life as imposing only a negative duty on the State not to arbitrarily deprive a citizen of his life. This is in contradistinction to modern application of the right to life. The modern approach combines the traditional view with the enforcement of the right in terms of the imposition of a positive duty on the government to take all reasonable steps to protect life. Therefore, following the modern understanding of the right, the Court in *Gabriel v The State*[214] held that the State's obligation in respect of citizen's right to life extends beyond its primary responsibility of securing the right by deterring the commission of offences, but also by taking preventive measures to ensure that the right is protected. Similarly, in *Nkpa v Nkume*[215] the Supreme Court held that every person resident in Nigeria has a right to go about his lawful business unmolested or unhampered by anyone else, be it a government functionary or private individual and that it is the duty of government to protect its citizens. Furthermore, in the case of *AG Adamawa State v AG Federation*[216], it was held that citizens of Nigeria have a right to seek protection of their human rights from their government. It is submitted that, this is a reverse way of stating that the government of Nigeria has a duty to protect Nigerian citizens, because if the citizens have a right to seek protection, the government has a corresponding duty to

[210] Communication 25/89, 47/90, 56/91, 100/93
[211] Ibid para 43
[212] *Tanrikulu v Turkey,* Application No 23763/94 of July 8, 1999
[213] [2010] 6 NWLR (Pt 1190) 280
[214] [2001] 6NWLR (Pt 710) 543
[215] [2005] 18 NWLR (Pt 958) 591
[216] [2004] Series C No 112 paras 158

provide such protection. On the other hand, the Inter-American Court of Human rights, in *Juvenile Re-education Institute case,* declared that "The right to life, and the right to humane treatment, require not only that the State respect them (negative obligation), but also that the State adopts all appropriate measures to protect and preserve them (positive obligation)".[217]

In line with the above development, in its true sense, the right to life encompasses everything that has the immediate or remote ability to cause death. It covers pollution of air, water and anything that generally affects well-being, including the lack of provision of adequate healthcare. It covers failure to provide adequate security; the destruction of a person's means of livelihood which makes it impossible for the person to afford the basic necessities of life etc. In other words, right to life presupposes the existence and availability to all of certain basic facilities such as food, health, shelter, and education. Thus, the right to life is linked to the right to work in order to obtain means of subsistence to procure food and shelter.[218]

The connection of the right to life with inadequate security and lack of basic infrastructure is, most obvious to those who have to live with the fear that, their lives may be wantonly deprived by forces around them due to the failure of government to tackle the challenges. The government is by no means entitled to sit back, while the governed are constantly deprived of their lives and means of livelihood as a result of security challenges, bad government policies, and lack of good infrastructures. This becomes very worrisome, when confronted with the fact that thousands of Nigerians died from activities of bandits, kidnappers, book haram, lack of safe environment, poor health facilities, hunger etc. deaths that would, perhaps, have been avoided if government truly discharges its responsibilities.

In the above vein, it can be viewed that one begins to see the inextricable connection between the right to life, and the failure to provide security and basic infrastructure that would reduce mortality rate. This would in turn justify the interpretation of the right to life, not only in the light of the imposition of a negative duty, but also as a right that imposes a positive duty on the government, to provide the basic conditions essential to the quest of Nigerians for a meaningful and dignified life. This is and should be made the focus of the judicial understanding of section 33.

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[217] S Uchegbu, 'The Concept of the Right to Life under Nigerian Constitution', JN Aduba, (ed.) *Essays in Honour of TO Elias,* (MIT, 2022), 151-152

[218] *Vanguard,* (Abuja, 22nd January 2024) <www.vanguardngr.com,> Accessed on 29th November 2024 @ 3:43pm

Moreover. no one disputes the sad fact that the mismanagement of the vast resources of Nigeria by successive governments, has negatively impacted on the life expectancy of the Nigerian people. The negative impact of bad governance is a reason why Section 33 CFRN can no longer be restrictively interpreted. A government that allowed a whopping over 13 trillion naira for security in nine years[219] to be misappropriated (this is just at the federal level, to the exclusion of figures from the states of the Federation) without a single prosecution, has every reason to be liable, for causing the death of the people, who have died from insecurity for which the money was budgeted. In any event, it is the government that allowed the funds allocated for security to be misappropriated; it is government that must take responsibility. When these plain truths are brought into the constitutional perspective of the right to life, it would be clear that it is incumbent on Nigerian lawyers and courts, to begin to use the constitutionally guaranteed right to life, to demand good governance which is the direct product of the enforcement of the various components of the right to life discussed above. By so doing, the right to life becomes the veritable tool for holding government, to account and making them responsive to the protection of the life of their citizens, by tackling the myriads of life-depriving problems currently prowling the nation.

In a related development, asides the duty of government to protect human life, it is also the duty of individuals to respect another person's right to life. It was held in *Abdulhamid v Akar*[220] that the position of the law is that fundamental rights procedures can also be instituted, against private individuals where fundamental rights are invaded, not by government agencies but by ordinary individuals. Such victims have rights, against the individual perpetrators of the acts as they would have done against state actions. There is no constitutional provision or any law prohibiting private individual from asserting violation of his right by another private individual. Therefore, the individual victim has the cause of action to initiate an action for enforcement of his right against such private individual as applicable against public establishment. Hence, States are further liable to take measures, to protect human life against unlawful assaults by third parties like terrorists and various legal or illegal institutions or groups or bring them to justice

Further to the above, from the words of the provision of Section 33 of the Constitution of Nigeria 1999 (as amended), it is clear that the right is not absolute but qualified.[221] This means that the right

[219] [2006] 13 NWLR (Pt 996) 128
[220] *Kalu v State* [1998] 13 NWLR (Pt 583) 531
[221] Section 33(1) CFRN 1999

may be taken away from an individual under certain circumstances provided for by the law. That is why the right to life (including other rights) even though a fundamental right cannot be totally termed an inalienable right. For instance, it is not considered a violation of the right to life, if it is in the execution of the sentence of a court.[222] The death penalty must be provided for, by the law and only a court can provide for it. In other words, nobody other than the courts, whatever its function or status, can determine or conclude whether or not a crime has been committed, or if it is punishable with death. In *Okoro v The State*[223] the court provided that the constitutional provision guaranteeing the right to life, recognises the deprivation of life as long as it is pursuant to the execution of a sentence of a court in a criminal matter of which the accused has been found guilty in Nigeria. Similarly, it is not considered a violation of the right to life, if the use of force which is no more than absolutely necessary, is resorted to in order to arrest or to prevent a detainee from escaping. Thus, a detainee may be lawfully killed where reasonable force is used to prevent his escape and the event of death is not in contravention of the right to life, with respect to the exceptional circumstances of the event. However, the force used must be unavoidable and not used with the intent to cause death.[224]

In addition, it is not considered a violation of the right to life, to use force which is no more than absolutely necessary to suppress a riot, insurrection, or mutiny even where circumstances of death are incurred. Furthermore, it is not violation of the right to life, where the act complained about is in defence of any person from unlawful violence or for the defence of property. But the court has stated, in *Ahmed v The State*[225], that for an accused person to plead self defence as provided for, under Section 33 of the CFRN 1999, the defence must be reasonable and necessary to save his life but where excessive and unreasonable force is used, the defence will not avail the accused person. It has been stated that a person may be justifiably killed in defence of property.

There are also other permissible derogations which are provided under section 45 of 1999 Constitution to include in the interest of defence, public safety, public order, public morality, public health, for the purpose of protecting the rights and freedom of other persons, and where an Act of the legislature curtails the right during a period of emergency.

[222] [1998] 12 SCNJ 84 SC
[223] JN Aduba, 'The Right To Life Under Nigerian Constitution: The Law, The Courts And Reality' SMA Belgore, *Chair Series, Nigerian Institute of Advanced Legal Studies* [2011] 17
[224] [1999] 7 NWLR (Pt 512) 641 SC
[225] [2001] 7 MJSC 87 at 91

1.3. RIGHT TO LIFE IMPLIED IN OTHER RIGHTS

To avoid this parochial view, courts in some countries do not view the right to life in isolation. While not abandoning its negative connotation, should death occur, the courts lean heavily on the positive components of the right, by reading it along with the positive duties of the State, often declared non-justiciable in constitutional texts. Examples of such positive duties are contained in Chapter II of the CFRN 1999, covering such components of the right to life as security, food, shelter, healthcare, healthy environment, etc. These provisions, being non-justiciable by virtue of Section 6(6)(c) of the CFRN 1999 are not enforceable on their own force. What courts in some countries have done is to enforce those essential components, not as autonomous constitutional provisions but as in-excludable components of the right to life. This is because most of the socio-economic rights contained in Chapter II of the CFRN 1999, cannot be neatly sieved away from the right to life. The intricate connection of some items in Chapter II to the right to life in Section 33 is obvious from the following provisions of Chapter II: Section 14(2)(a): "the security and welfare of the people shall be the primary purpose of government"; Section 15(3)(a): it is the duty of government to "provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation"; Section16(1)(b), it is the duty of government to "control the national economy in such manner as to secure the maximum welfare, freedom, and happiness of every citizen on the basis of social justice and equality of status and opportunity". Similarly, the Supreme Court of Nigeria held in *Abu v Odugbo*[226] that Section 6(6)(c) of the 1999 Constitution does not absolutely foreclose 'justiciability' of Chapter II and allows its enforcement if it is so provided in any other section of the Constitution. The court, in *Federal Republic of Nigeria v Anache & Ors*[227] has upheld this position, stating that since Section 6(6)(c) is qualified by the phrase, 'save as otherwise provided by this Constitution' the 'justiciability' of Chapter II is not entirely foreclosed. Some of these components are as follows:

i. Positive Duty to Provide Conditions that Guarantee Dignified Life: What this means is that the right to life is not just a bare negative duty on the State not to arbitrarily take life; it emphasises that the right to life, has at its core, the positive duty on the State to create the essentials that would allow for a dignified life as reiterated by Section 14(2)(a) of the 1999 Constitution that "the security and welfare of the people shall be the primary purpose of government." The government would be in

[226] [2004] NGSS 22,
[227] *Villagran-Morales et al v Guatamela* [1999] Inter-Am Ct HR Series C No 63, 144

breach of the right to life, if it does not channel the commonwealth towards the common good by pursuing policies and programs towards a society that guarantees the basic necessities of life to the people. In the *Street Children case,*[228] the Inter-American Court of Human Rights, declared:

> The right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning.... In essence, the fundamental right to life includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur.

Accordingly:

> States must adopt any measures that may be necessary to create an adequate statutory framework to discourage any threat to the right to life; to establish an effective system of administration of justice able to investigate, punish and repair any deprivation of lives by state agents, or by individuals; and to protect the right of not being prevented from access to conditions that may guarantee a decent life, which entails the adoption of positive measures to prevent the breach of such right.[229]

ii. Right to Healthcare: Section 17 of the 1999 Nigerian Constitution provides for the right to health. The section provides that state shall direct its policy towards ensuring that:- (d) there are adequate medical and health facilities for all persons,[230] although the constitution denies legal recognition to the right to health as well as other social legal and economic rights at the domestic level.[231] Nigeria being a party to the African Charter on Human and Peoples Right, the African Charter on the Rights and Welfare of the Child, and the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa and the fact that Nigeria has domesticated the African Charter in 1983 has introduced monumental changes to the legal status of these rights in Nigeria. No longer the Constitutional denial of legal recognition to these rights is relied upon to shield the government or any of its agencies from obligation regarding this right. Article 16 of the Charter provides;- (1) every individual shall have the right to enjoy the best attainable state of physical and mental health, (2) State parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

[228] *The Indigenous Community of Sawhoyamaxa v Paraguay* [2006] IACHR 2 Series C No 146 para 153
[229] S. 17(5)(d) CFRN 1999
[230] Ibid S. 6(6)(a)
[231] [2005] American Human Right Law Report, 151

The right to healthcare is in itself quite encompassing; it covers everything that would adversely affect health when deprived, and thus, ultimately threatens life. It covers safe drinking water, healthy environment, standard medical care and so on. In *Gbemre v Shell BP & Anor,*[232] the court declared that the actions of Shell and NNPC in continuing to flare gas in the course of their oil exploration and production activities in the applicant community was a violation of the community's fundamental right to life, including healthy environment and dignity of the human person guaranteed by the constitution and that they were to be restrained from further flaring gas in the applicants community.

This component of the right to life imposes a positive duty on the government, to channel its policies towards the provision of adequate and affordable healthcare as well as a duty to eliminate situations that are adverse to good health. Special attention should be paid to the health needs of women and girls, access to female health care providers and services, reproductive health care and counselling for survivors of sexual and gender-based violence and other abuses. Similarly, special attention must also be given for preventing contagious and infectious diseases like Covid-19.

iii. Right to Livelihood: The Indian Supreme Court in *Olga Tellis v Bombay Municipality Corporation*[233] has defined the right to life to include the right to livelihood. The same reasoning was employed by the Inter-American Court of Human Rights in the *Indigenous Community of Yakye Axa v Paraguay*,[234] where the court held that the prevention of access to the applicant's traditional means of livelihood was a violation of the right to life under Article 4 of the Inter-American Convention on Human Rights. The article provides that "every person has the right to have his life respected". Indeed, the reasoning of the same court in the *Street Children case,*[235] that access to the conditions that guarantee dignified existence is part of the right to life, should particularly be seen in the light of access to means of livelihood.

iv. Right to Education: The 1999 Nigerian Constitution provides for right to education under S. 18(1) of Chapter II.[236] The Section provides "Government shall direct its policy toward ensuring that there are equal and adequate educational opportunities at all levels;" The Constitution by S. 6(6)(c) declared the provisions of Chapter II as non-justiciable. However, the Federal Government of Nigeria through the National Assembly enacted an Act known as Compulsory, Free and Universal Basic Education

[232][1985] 2 Supp SCR 51; Also See *ASK v Government of Bangladesh* [1999] Writ No 3034
[233] [2005] Series C No 125 Inter American Commission of Human Right 6
[234] Ibid para 144
[235] Fundamental Objectives and Directive Principles of State Policy
[236] Universal Basic Education Act, 2004

Act, 2004.[237] The main purpose of the Act is to provide free, compulsory and universal education for children up to the junior secondary school. It provides that every Government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary age[238] and every parent shall ensure that his child or ward attends and complete his:- (a) Primary school education; and (b) Junior secondary school education by endeavouring to send the child to primary and junior secondary school.[239] Furthermore, the stakeholders in education in a Local Government shall ensure that every parent or person who has the care and custody of a child performs the duty imposed on him under section 2(2) of this Act.[240] The Act ensures that the services provided in public primary and junior secondary schools shall be free of charge.[241] The Act finally makes it an offence for anyone who contravenes the provisions of S. 3(1) of the Act.[242]

Similarly, the Federal Government of Nigeria enacted the Child Right Act which is a major legislation that protects a child in Nigeria. The Act was enacted by the National Assembly in 2023, to provide for and protect the right of every Nigerian child. It provides that the best interest of a child should be paramount in all activities that concern a child, [243] and provides among other things that every child has the right to free, compulsory and universal basic education. Further, it shall be the duty of the government in Nigeria to provide such education,[244] and every parent or guardian shall ensure that his child or ward attends and complete his primary and secondary school education.[245] Thus, a combine reading of S. 2 of the UBE Act and S. 15 of the Child Rights Act revealed that the right to education from primary to junior secondary school is fundamental right to all children. However, it is submitted that a careful consideration of the provision of S. 15(3) of the Child Right Act which directs every parent whose child or ward has completed junior secondary school to send the child to senior secondary school and the object of S. 18 of the Constitution; that this right should be extended to senior secondary school. This position can be supported by the decision of the ECOWAS Court of Justice in the case of *SERAP and Another v Federal Republic of Nigeria,* **[246]** where it was held that education is a fundamental right and fundamental to the enjoyment of the right to life. This is in accordance with S. 13 of the

[237] Ibid S. 2(1)
[238] Ibid S. 2(2)
[239] Ibid S. 2(3)
[240] Ibid S. 3(1)
[241] Ibid S. 3(2)
[242] Child Rights Act, 2003
[243] Ibid S. 15(1)
[244] Ibid S. 15(2)
[245] [2001] American Human Right Law Report, 60
[246] [1993] 4 Law Reports of the Commonwealth, 147

Constitution that mandates the various organs of government to apply, observe, and conform to the provisions of Chapter II of the Constitution. The Government of Nigeria in observance of the chapter and specifically S. 18 enacted the UBE Act 2003. This is pursuant to the powers conferred on the National Assembly by item 60(a) of the 2nd Schedule and S. 4(2) of the 1999 Constitution to make laws for the establishment of bodies for the enforcement and regulation of the provisions of Chapter II. Therefore, it is submitted that the Federal Government of Nigeria has enacted this Act on that item. The right to education has become fundamental and enforceable, whereby citizens can if they wish compel the government to provide for them. In the Indian case of *Unni Krishnan, JP v State of AP and Others*,[247] the Supreme Court of India was seized with the determination of the nature of right to education contained in the non-justiciable. The court held that the right to education is implied in, and fundamental to the enjoyment of the right to life in Article 21 of the Indian Constitution, 1950. Accordingly, it was declared that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development.

In this development, the real connection between the right to life and education becomes obvious. This is because when viewed in the light of the fact that an uneducated individual, who lacks the expertise to gain employment to sustain his livelihood, will not only be left with a debased self-esteem, he would also be banished to an inferior societal standing. This would, no doubt, injure his right to life; right to own property; right to associate with others in society; right to air his opinion in public, etc.

(e) Right to Healthy Environment: Courts in other countries have also shown that the right to healthy environment is integrated in the right to life. Indeed, the importance of a good and productive environment, to the sustenance of the life and wellbeing of individuals cannot be gainsaid. In addition to the general health implications of an unhealthy environment, there is the larger impact on individuals in a community that relies on its immediate environment (say, for fishing or farming) to generate a livelihood. This also has a larger negative impact on the commonwealth, as a poor environment limits the ability of a nation to feed itself. It does also impact on the depletion of the rural communities arising from the need to seek other means of sustenance.

In realization of the importance of the means of sustaining life to the right to life, it can be seen in the Nigerian case of *Jonah Gbemre v Shell*, where the plaintiff sued Shell Nigeria, NNPC and the Attorney

[247] [1987] All Indian Reports, 1086

General of the Federation, seeking a declaration that the rights to life and dignity of human person contained in Sections 33(1) and 34(1) of the Constitution included the right to clean, poison-free, pollution-free, and healthy environment. The Federal High Court declared that the actions of the 1st and 2nd respondents in continuing to flare gas in the course of their oil exploration and production activities in the Applicant's community was in violation of the fundamental right to life (including healthy environment) and dignity of human persons guaranteed by the Constitution and the African Charter. Similarly, in the Indian case of *MC Mehta v Union of India*,[248] it was held that the denial of the means of sustaining life is tantamount to a denial of the right to life. In categorical terms, the court held that the right to life includes the right to live in a clean and harmless environment. Further, in *Shela Zia v Water and Power Development Authority (WAPDA)*,[249] the Supreme Court of Pakistan ruled that the right to life included a right to live in a clean environment.

The decisions of the courts in the above cases, were largely anchored on the fact that, the socio-economic and environmental rights do not only ensure the attainment of an adequate standard of living for the people, they also help to guarantee certain conditions that are fundamental to human existence, without which "fundamental rights" will have no meaning. It follows that the intricate relationship between the right to a healthy environment and the right to life cannot be obliterated by reducing the right to a healthy environment to the level of non-justiciability.

1.4. THE STATE OF LIFE IN NIGERIA

The right to life imposes a positive duty on the government to prevent a state of affairs that easily lends itself to deprivation of life. This point was aptly reiterated in *AG Adamawa State v AG Federation,*[250] where it affirmed that the right to life implies an obligation on the part of State to take reasonable steps to prevent situations that could result in the violation of that right. It is imperative to look at the extent to which Nigeria meets its obligation of ensuring, preventing, and protecting right to life as follow:

i. Security Challenges: it remains a big challenge to the right to life in Nigeria, the security challenges confronting Nigeria include Boko Haram insurgency, kidnapping, political violence, armed robbery, Niger Delta militancy, extremism, communal violence, pipe vandalism, oil theft, etc. For example

[248] [1994] PLD.A16

[249] [2005] 18 NWLR (Pt. 958) 591

[250] Centre for Preventive Action [2022] <www.cfr.org> Accessed on 24th November 2024 @6:06pm

Centre for Preventive Action[251] posits that "since 2011, Boko Haram has conducted terrorist attacks on religious and political groups, local police, and the military, as well as indiscriminately attacking civilians in busy markets and villages." It is estimated that from 2009 to 2024, the attack of the sect claimed more than 40,000 lives and led to massive destruction of property worth billions of naira.[252] Further, According to *SBM Intelligence*, between 2019 to first quarter of 2024, a total of 15,398 people were kidnapped across Nigeria, while more than 564 were killed in violence associated with kidnappings.[253]

In addition, according to Nextier Violent Conflict Tracker Report, herder-farmer conflict has led to the loss of over 60,000 lives between the years of 2015 to 2024. Middle belt or most parts of the North central region are major theatres of this insecurity.[254] Further still, ACLED estimate reveals a staggering 13,485 deaths attributed to banditry between 2010 and May, 2023 and actual number may be higher. On the other hand, the activities of Islamic State of West Africa Province (ISWAP) and Secessionist Groups such as Indigenous People of Biafra (IPOB), Movement of the Actualization of Sovereign State of Biafra (MASSOB), Biafra Zonist Movement, Niger Delta Liberation Front, and Oduduwa Republic agitators, have been violating the right to life of Nigerians.

ii. Right to Livelihood: Essentially, one of the obligations that the State must inescapably undertake as guarantor, to protect and ensure the right to life, is that of generating minimum living conditions that are compatible with the dignity of the human person and of not creating conditions that hinder or impede it. In this regard, the State has the duty to take positive, concrete measures geared toward fulfillment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority.[255] Right to life cannot be achieved without a lively and dignified life and a dignify life can be attained when the people have good employment opportunities and inflation is under control. However, Nigerian unemployment trend has continued to climb as the rural farmers abandon their farms for fear of death while the various attacks increase in magnitude. This act of violence sent the agrarian rural dwellers out of their farms and by implication increase

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[251] *Voice of America News*, (24th November, 2024} @6:04am

[252] *SBM Intelligence*, 15,398 People Abducted in Nigeria Since 2019 - SMB <https://businessday-ng.cdn.amproject.org/v/s/businessday.ng/news/article/15398-people-abducted-in-nigeria-since2019-sbm> Accessed on 27th November 2024 @1:37pm

[253] *Vanguard* (Abuja 22nd January, 2024) <www.vanguardngr.com> Accessed on 29th November,2024, @ 3:43pm

[254] JN Aduba, 'The Right To Life Under Nigerian Constitution: The Law, The Courts And Reality' SMA Belgore, *Chair Series Nigerian Institute of Advanced Legal Studies* [2011] 19

[255] 'Nigeria Unemployment Rate 2024' <https://tradingeconomics.com/nigeria/unemployment-rate> Accessed on 25th November 2024 @ 6:09pm

unemployment. Nigerian current unemployment rate remains one of the country's most challenging socio-economic encumbrance as it rose to 5% in the third quarter of 2023 from 4.2% in the previous quarter.[256] Similarly, government policies in the country have continued to increase poverty headcount as well as absolute number of poor with attendant food scarcity, the households no longer engage in their usual livelihood.[257] Nominal earnings have not kept up with inflation, pushing another10 million Nigerians into poverty in 2023. Based on World Bank projections, about 40.7% of Nigerians are estimated to live below the international poverty line by the end of 2024.[258] Furthermore, following fuel subsidy removal and naira devaluation policy led to food price increases and other commodities. The Nigeria annual inflation rate which has been on the downward trend and under control since 2012 began to climb after 2015. It increased to 12.13% in June 2015 and by January 2016 has settled in the region of 15.70%, representing about 0.95% increase from February 2015. As at December 2023 it raises to 28.92%, and in January 2024 it increased to 29.90%, a 0.98% increase from December 2023, it accelerated further to 34.19% in June 2024, the highest since 1996. Food inflation that accounts for the bulk of Nigeria's inflation basket surged to a record high of 40.87% in June 2024.[259] In the 2024 Global Hunger Index (GHI), Nigeria ranks 110th out of the 127 countries with a score of 28.8 in the GHI[260]

iii. Healthcare: The right to life of Nigerians is affected by the failure to provide basic health infrastructure and facilities that would reduce mortality rate. Nigeria as a country records many deaths, caused by its failure to provide efficient health system.[261] Most women especially in the rural parts of the country suffer a lot of deaths caused by lack of antenatal care. For those who survive, their rights are still affected by other cultural practices and beliefs. The right to life of a woman depends largely on her reproductive rights, which include on the number and spacing of her children.[262] Matters of reproductive health is worsened because of the poverty and high level of inflation in the country. This

[256] FEWS NET, 'Nigeria Food Security Outlook, Persisting and Escalating Conflicts in the Northeast and Other Northern Areas Increasing Needs. 2022' <https://fews.net/west-africa/nigeria/food-security-outlook/february-2022> Accessed on 30th November 2024 @5:00pm

[257] 'Nigeria – World Bank' <https://datacatalogfiles.worldbank.org> Accessed on 25th Noveember 2024 @2:37pm

[258] 'National Bureau of Statistics' <https://nigerianstat.gov.ng> Accessed on 29th Noveember 2024 @6:48

[259] 'Global Hunger Index. 2024' < https://www.globalhungerindex.org > Accessed on 27th November 2024 @2:05pm

[260] BBC News, 2024 <https://www.bbc.com>news>world-african> Accessed on the 27th of November 2024 @8:48am

[261] M Aniekan, 'Status and Limit of Human Rights: Right to Life under Nigerian Constitution, 1999 with Focus on Rural Women in Akwa Ibom State' *Mediterranean Journal of Social Sciences* [2014] (5) (26) http://www.mcser.org/journal/index.php/mjss/article/viewFile/5288/5105 Accessed on the 27th of November 2024 @11:30pm

[262] Ibid

is because most women in rural areas cannot take themselves to health center and few that can, may not be financially stable to pay for medical and diagnosis bills let alone to buy the drugs that may be prescribed for them. They are left at the mercy of God. It is submitted that, any the government policy that causes hardship to masses and prevent them to have access to efficient health service, constitutes a social barrier against right to life as it exposed them to serious health risk. Another example of how the right to life is affected in Nigeria is in relation to prisons inmates who are housed in dilapidated and poorly ventilated structures. They are poorly fed, with most of them relying on outside sources such as family and friends for sustenance. Improper nutrition, in addition to lack of potable water, poor sanitary conditions, and severe congestion contribute to unhealthy conditions for the inmates.[263]

iv. Right to Healthy Environment: The situation of the environment in Nigeria is rapidly degenerating. Nigeria is facing emerging challenges in environmental health such as climate change, low air quality, water contamination, wind erosion, deforestation, desertification, light exposures, poor waste management, and natural hazards like floods, storms, and drought.[264] All of these negatively affect the health of Nigerians. Nigeria being a significant oil producer has problem associated with exploration, such as oil spillage on water and land, and gas flaring leading to air pollution. Most of the highest ranked risk factors causing most death and disability combine in Nigeria are environmental related such as cardiovascular disease, respiratory infection, tuberculosis, lower respiratory infections, chronic respiratory diseases, ischemic heart diseases, stroke, communicable, maternal, neonatal, and nutritional diseases.[265] Nigeria is ranked amongst the world's first five and largest in Africa, with the top most level of premature death associated with air pollution.[266] It has been estimated that an annual death of about 300 thousand and more than three million lost in Nigeria yearly associated with unsafe water and sanitation with entric infections, diarrheal diseases, communicable, maternal, neonatal, and nutritional diseases.[267]

v. Education: education whether formal or informal, is very important to every society. It is a fundamental human right and a powerful tool for individual and societal development. It enhances the

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[263] 'Environmental Health Situation in Nigeria: Current Status and Future Needs' < https://www.sciencedirect.com > Accessed on 28th November, 2024, @2:3:00pm

[264] OE Orisakwe, *Nigeria: Environmental Health Concerns*, (2nd Edition, Elsevier Inc., 2019) 214

[265] IS Abdulraheem, 'Primary Health Care Services in Nigeria: Critical Issues and Strategies for Enhancing the Use by the Rural Communities' *Journal of Medical Law*, [2022], 13

[266] 'Environmental Health Situation in Nigeria: Current Status and Future Needs' < https://www.sciencedirect.com > Accessed on 28th November 2024 @2:3:00pm

[267] 'Why Education is Important and How Does it Affect One's Future?' < https://www.worlddivision.ca > Accessed on 29th November 2024 @3:40pm

quality of life by opening doors to better empowerment opportunities and higher income levels for everyone regardless of their background. It also helps eradicate poverty and hunger.[268] However, according to UNICEF Nigeria's education system faces an alarming crisis, with 10.2 million children of primary age, and another 8.1 million of junior secondary school age out of school, and 74% of children aged 7–14 lacking basic reading and math skills.[269] It is submitted that, one of the major reasons that forces children out of school, is unfavourable economic policies that lead to abject poverty and inflation to the extent that parent can no longer feed their family, in view of which they use their children, for hawking to generate means of earning for their survival especially girls and resulted in gender base violence.

The importance of this approach, lays in the use of the right to life to prevent wasteful deaths by compelling the government to take proactive steps against deaths occurring, not only from its commission, but also from its errors and omissions. When a government sat back and watched, while its citizens' life is theatrically and persistently taken away by avoidable deaths. Therefore, the resultant deaths cannot be completely separated from the failure of the government in its obligations to take positive steps to prevent situations that could result in the violation of the right to life.

1.5. CONCLUSION

This paper has argued that the right to life is a bundle of rights which are available not only for the prevention of unlawful deprivation of life, but also for the sustenance of life. It was found that:

Nigeria like most other countries has constitutionally guaranteed the right to life as a fundamental right but in practice, has not done much in ensuring the protection of the right especially as lives are being lost on a daily basis in the country with no one being held accountable for the loss and the economic, social, and cultural rights which ought to give meaning to the right to life are not justiciable.

The duty imposed on the government to protect its citizens in line with the social contract doctrine requires government to explore all necessary measures, be it legislative, executive or judicial, to protect its citizens in the society from all manner of interests that can impede or completely annihilate the enjoyment of their status as human beings.

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[268] 'Immediate Action Needed to Protect Nigeria's Children and Schools, 2024' < https://www.unicef.org > Accessed on 27th November 2024 @8:10pm

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Many countries have made both the first and second generations rights justiciable. In Nigeria, this interpretation has not gained much meaning because only the first generation rights are justiciable. The second generation rights only apply as directive principles of state policy.

It is hereby recommended that:

The government should enhance the enforceability and practical realization of the right to life in Nigeria and amend the constitution, to make the provisions of Chapter II justiciable. So that it can be used as a tool for promoting good governance and for holding government accountable for failure to create a society conducive to the sustenance of life.

There should be a general orientation among government officials, to respect the rule of law and provide efficient and effective services that will make life meaningful, without abusing the powers giving to them or the offices they occupy. With qualitative education and corresponding employment opportunities, most security challenges or other unwanted illegal groups in the country will be tackled.

Judges should be proactive, liberal, independent, fearless, and efficient so that like their counterparts in countries like India, they can interpret the right to life as the right to enjoyment of the basic necessities that affect the quality of life thereby making the provisions of chapter II justiciable and the executive arm of government be advised to adhere to and respect these decisions.

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