

# **An appraisal of the right to Life as Guaranteed by the Nigerian Constitution**

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## **Abstract**

*The right to life is the most fundamental of all human rights because other rights can only be exercised by a person who has life. The constitution of the Federal Republic of Nigeria, 1999 as Amended, has guaranteed this right in section 33 as a fundamental right but has not given much effect to the protection of this right as human life is lost on a daily basis in Nigeria with little or no effort by the government to protect it. This research adopts the doctrinal method to explain what the right means, how fundamentally it should be protected and guaranteed as well as the other rights associated with the right to give it effect. It finds 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. In addition, the rise in selfish and corrupt practises of most government officials leads to the acquisition of weapons of mass destruction affecting the right to life in the country including unemployment, illiteracy, poverty, low standards of healthcare amongst others. It recommends the justifiability of rights contained in chapter II of the Constitution, and the increase of judicial activism at the all levels of the Bench and Bar, to interpret and maintain causes of action for promoting good governance and for holding government accountable for failure to create a society conducive enough for the sustenance of life in the country.*

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## **Introduction**

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.<sup>2</sup> 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 the wellbeing of an individual. It covers failure to provide adequate security and the destruction of a person's means of livelihood making it impossible for the person to afford the basic necessities of life. Human rights are known to be a set of moral and legal guidelines that promote and protect values and ensure adequate standard of living. The rights like the right to life, right to food and housing, right to dignity, right to healthy environment, right to adequate healthcare and so on, are interrelated and interdependent on each other. To this end, the most fundamental of the rights cannot be enjoyed without the protection of other rights.

Despite the fact that the right to life, has featured very prominently in successive constitutions within the country, the pronouncement of judges, the activities of human rights lawyers and groups in Nigeria and the establishment of the Human Rights Commission, right to life violations in Nigeria are on the increase. Security challenges including terrorist activities by boko haram members, incessant herdsmen attacks on different communities in the country, activities of kidnappers and armed robbers, corrupt practises in offices as well as abuse of power by police officers and other security officials including members of the Nigerian armed forces without anyone being held responsible or accountable for, are some of the factors affecting the right to life in Nigeria. Corruption is a plague that has a wide range of corrosive effects on the country and leaves many citizens suffering from malnutrition, food access

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<sup>2</sup> D 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](http://www.echr.coe.int/LibraryDocs/HR%20handbooks/handbook08_en.pdf)> Accessed 12<sup>th</sup> September, 2016.

inequality, homelessness, inadequate shelter, unclean water and other factors all affecting the quality of life in the country. It is against this background that this research is carried out to appraise the extent to which right to life is actually guaranteed in Nigeria.

The research is divided into six parts. The first is the introduction followed by the second part which covers the concept and origin of human rights and which is important in understanding the basis of the provision for the right to life. The third part gives a general overview of human rights in Nigeria while the fourth looks at the National Human Rights Commission in relation to the protection of human rights in Nigeria. The fifth part which dwells on the crux of the matter, is an appraisal of the right to life as guaranteed by the Constitution of the Federal Republic of Nigeria (1999)<sup>3</sup> and what actually obtains in practice within the country. The last part of the work is the concluding part containing observations and recommendations.

### **The Concept and Origin of Human Rights**

On the issue of human rights, the concepts of universalism and cultural relativism stand in sharp opposition to each other.<sup>4</sup> While the concept of Universalism holds that each human being possesses certain inalienable rights simply because he or she is a human, regardless of the national background, religious or political views, gender or age, cultural relativism is the assertion that human values, far from being universal, vary a great deal according to different cultural perspectives.<sup>5</sup> Most people are however of the view that human rights are rights that are inherent in all human beings

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<sup>3</sup> Cap 23 LFN 2004, hereinafter referred to as the CFRN or the Constitution

<sup>4</sup> M Richard, 'Human Rights: Universalism and Cultural Relativism' [2003] (6)(3) *Critical Review Journal of International Social and Political Philosophy* 70-103 <<https://www.tandfonline.com/doi/abs/10.1080/1369823032000233564?src=recsys&journalCode=fcri20>> accessed on the 14<sup>th</sup> of September, 2016

<sup>5</sup> 'Universalism and Cultural Relativism in Human Rights International Law' <Essay<https://www.lawteacher.net/free-law-essays/international-law/universalism-and-cultural-relativism-in-human-rights-international-law-essay.php>> accessed on the 14<sup>th</sup> of September, 2016

whatever their status. Everyone is entitled to the rights without discrimination. The court in *Gov. Of Bornu State v. Gadangari*,<sup>6</sup> stated that fundamental rights are a significant component of liberty while the Virginia Declaration of Rights 1776,<sup>7</sup> provides that ‘All men are by nature equally free and independent and have certain inherent rights, of which, when they enter a state or society, they cannot, by any compact, deprive or divest their posterity’.<sup>8</sup> Amnesty International USA has defined human rights to mean ‘basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language, or other status.’<sup>9</sup> Whereas human rights are concepts of universal application, fundamental rights are dominantly domestic, same being the product of positive guarantee by the constitution of states. In other words, until states take positive steps and guarantee human rights in their domestic constitutions, they remain concepts of universal application. Thus, in *El-Rufai v. Senate*,<sup>10</sup> the Supreme Court defined Fundamental rights as rights which stand above the ordinary laws of the land and which is antecedent to political society itself. It further provided that it is a primary condition to a civilised existence and that the constitution has enshrined its principles so that they can be immutable.

The concept of human rights is a product of historical development basically owing its development to natural law and natural rights.<sup>11</sup> Since the end of the Second World War, human rights have been universalized and popularized as instruments for

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<sup>6</sup> (2016) 1NWLR (pt. 1493) 396 SC

<sup>7</sup> <<http://www.constitution.org/bcp/virginia/declaration/rights.html>> accessed on the 12<sup>th</sup> of September, 2016

<sup>8</sup> < <http://www.businessdictionary.com/definition/human-rights.html>> accessed on the 12<sup>th</sup> of September, 2016

<sup>9</sup> < <http://www.amnestyusa.org/research/human-rights-basics>> accessed on the 12<sup>th</sup> of September, 2016

<sup>10</sup> (2016) 1 NWLR (pt. 1494) 504 SC

<sup>11</sup> AJ Lisska, *Aquinas Theory of Natural Law: An Analytical Reconstruction*, (Oxford Scholarship Online, 2011) <<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198269670.001.0001/acprof-9780198269670-chapter-9>> accessed on the 14<sup>th</sup> of September, 2016

shaping human worth, interaction and development.<sup>12</sup> In fact, it has been stated that the most important socio-political event characterising the second half of the twentieth century is the international effort to determine and protect human rights.<sup>13</sup> It is now a universally held belief that all human beings are born with an equal degree of freedom, rights and liberties.<sup>14</sup> It has also become an almost universally recognized and accepted concept that individuals possess certain definite political, civil, economic and social rights which governments have the duty and responsibility of protecting and enforcing. Included among the rights and liberties specifically emphasised in international documents is the right to life.

The human rights movement was championed by the United Nations after the Second World War in response to the gross violations of human rights carried out during the war. International declarations and conventions were adopted to protect the dignity, rights and freedom of human beings. First was the Universal Declaration of Human Rights (UDHR), adopted by the UN on the 10th December, 1948. This instrument is regarded as the bedrock for the development of other International Human Rights Instruments. It recognises two sets of human rights including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). In the hierarchy of human rights, civil and political right have taken primacy and form the bedrock of the first generation rights while the economic, social and cultural rights constitute the second generation rights. This position though has changed with the Vienna Declaration and Programme of Action of 1993 on the indivisibility of human rights. There also exists the third generation rights which are largely

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<sup>12</sup> O Osumah and S Enabunene, 'Women Trafficking and Violations of Right to Life in Nigeria' [2012] (1)(2) *Online Journal of Social Sciences Research* 68 <<http://www.onlineresearchjournals.org/JSS>> accessed on the 7<sup>th</sup> of September, 2016

<sup>13</sup> R Safa, 'Right to Life' (1999) (3) (4) *Journal of International Affairs* 4 <<http://sam.gov.tr/wp-content/uploads/2012/02/SafaReisoglu.pdf>> accessed on the 7<sup>th</sup> of September, 2016

<sup>14</sup> Ibid

unofficial since they cannot be directly found in any international document like the first and second generation rights but include a broad spectrum of rights consisting of group and collective rights.

The civil and political rights are libertarian in character as they relate to the sanctity of the individual and his rights within the socio-political milieu in which he is located.<sup>15</sup> They include but are not limited to the right to life, liberty and security of a person, freedom from slavery or servitude, freedom from torture, cruel, inhuman or degrading treatment, recognition as a person, remedy for acts of violation of fundamental rights, liberty, fair hearing, privacy, movement, asylum and nationality, property, freedom of thought, conscience and religion, expression, assembly and association, participation in government, and equal access to public service.<sup>16</sup>

The second generation rights guarantee different members of the citizenry equal conditions and treatment. They are fundamentally economic, social, and cultural in nature and include the right to be employed in just and favourable conditions, rights to food, housing and health care, as well as social security and unemployment benefits.<sup>17</sup> Third generation human rights are those rights that go beyond the mere civil and social rights and unlike the above covenants of rights, they are unconventional and are not legally binding on sovereign countries. However, many international documents still recognise and give credence to them like the African Charter on Human and Peoples' Rights (ACHPR) which ensures many of those rights including the right to self-determination, right to economic and social development, right to natural resources and right to satisfactory environment.<sup>18</sup>

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<sup>15</sup> D Jacob, 'Human Rights under the Nigerian Constitution: Issues and Problems' (2012) (1)(2) *International Journal of Humanities and Social Science* <[http://www.ijhssnet.com/journals/Vol\\_2\\_No\\_12\\_Special\\_Issue\\_June\\_2012/6.pdf](http://www.ijhssnet.com/journals/Vol_2_No_12_Special_Issue_June_2012/6.pdf)> accessed 12th september, 2016

<sup>16</sup> Articles 3-21 UDHR 1948

<sup>17</sup> Articles 22-28 UDHR 1948

<sup>18</sup> Articles 20-24 African Charter on Human and Peoples' Rights

All over the world, constitutional provisions have been made for the protection of human rights because, it is the state, with its various institutions that has the primary responsibility for guaranteeing the implementation and enforcement of these rights in respect of its citizens and all those coming under its jurisdiction. They are rights which the executive, the legislature and the judiciary are all enjoined to protect. The principle of state obligation to protect human rights especially the right to life is enshrined under the International Human Rights Law in the case of *Amnesty International and others v Sudan*<sup>19</sup> where the African Commission on Human and Peoples' Rights held that the government has a responsibility to protect all people residing under its jurisdiction and that the government of Sudan was in violation of the right to life enshrined under Article 4 of the ACHPR since it had failed to protect its citizens from the violation of the right.<sup>20</sup>

### **Human rights in Nigeria**

In Nigeria, beginning from the post-independence constitution, due attention has always been given to the issue of human rights. The inclusion of human rights into the Nigerian constitution was first recommended by the commission appointed to look into the fears of the minorities in Nigeria in as far back as 1958.<sup>21</sup> This resulted in its inclusion in the 1960 independence Constitution,<sup>22</sup> the 1963 Republican Constitution<sup>23</sup> and thereafter, the 1979 Constitution.<sup>24</sup> In the 1999 Constitution, two Chapters,<sup>25</sup> spanning 26 (twenty six) sections are devoted to human rights some

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<sup>19</sup> African Commission on Human and People's Rights Consolidated Communications 48/90, 50/91, 52/92, 89/93

<sup>20</sup> C. Francis, "How Much Is Life Worth In Nigeria? Nigeria Masterweb Citizen News May 20<sup>th</sup>, 2012 <<http://nigeriamasterweb.com/blog/index.php/2012/05/20/how-much-is-life-worth-in-nigeria>> accessed on the 7<sup>th</sup> of September, 2016

<sup>21</sup> I Uzo, *Guide to Fundamental Rights Litigation* (2n ed Law Digest Publishing Co. 2016) 3

<sup>22</sup> Chapter II, 1960 Constitution

<sup>23</sup> Chapter II, 1963 Constitution from sections 18 to 40

<sup>24</sup> Chapter IV, 1979 Constitution from section 30 to 39

<sup>25</sup> Chapters II and IV, 1999 Constitution.

of which have been guaranteed as fundamental rights. It is to be noted here that the conventions and charters adopted and signed by Nigeria do not apply automatically within the country. These international instrument have to be first domesticated by going through the process of ratification by the National Assembly before they can apply as legally binding documents in Nigeria In the case of *Abacha v Fawahinmi*<sup>26</sup> the supreme court in construing the provisions of section 12, stated that, ‘An international treaty to which Nigeria is a signatory does not *ipso facto* become a law enforceable as such in Nigeria. Such a treaty would have the force of law and therefore be justiciable only if the same has been enacted into law by the National Assembly’.

Nigeria domesticated the African Charter on Human and Peoples Rights (ACHPR) by enacting the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.<sup>27</sup> The Charter makes no distinction between the Civil and Political Rights and Economic, Social and Cultural Rights. The *El-Rufai* case<sup>28</sup> provided that the African Charter on Human and People’s Rights (Ratification and Enforcement) Act 1983 has the force of law in Nigeria and is deemed to be an Act of the National Assembly. The constitution has primacy over treaties and international documents but these treaties enjoy equality and parity of status with other domestic legislation when they have been domesticated. The *Abacha* case,<sup>29</sup> while confirming the above held that as a statute with international flavour, if there is a conflict between it and another statute its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation. It went further to state that the Charter possesses a greater vigour and strength than any other

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<sup>26</sup> [2000]FWLR (pt 4) 533 at 585-586. SC

<sup>27</sup> Cap 10 LFN, 1990 (now Cap A9 LFN 2004).

<sup>28</sup> (n 9)

<sup>29</sup> (n 25)



domestic statute.<sup>30</sup> It is however, not superior to the constitution as the constitution enjoys supremacy and all laws inconsistent to it are void to the extent of their inconsistencies.<sup>31</sup> The ECOWAS Treaty of 1975<sup>32</sup> also guarantees the right to life and Article 15 (4) of the Revised Treaty provides that Judgements of the Court are binding on all member States.<sup>33</sup>

The dilemma is that unlike the ACHPR and ECOWAS treaty, the Nigerian Constitution makes a remarkable distinction between civil and political rights on the one hand and economic, social and cultural rights on the other. The problem with the dichotomy created in the Constitution between the rights, is that while the provisions of Chapter IV containing the civil and political rights are justiciable, the provisions of chapter II dealing with social, economic and cultural rights are declared non justiciable.<sup>34</sup> In the case of provisions contained in Chapter IV of the Constitution, the same Constitution has provided that, ‘any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress’.<sup>35</sup> The proper procedure for applying for redress is through the Fundamental Rights (Enforcement Procedure) Rules 2009.<sup>36</sup>

Second and third generation rights do not enjoy this benefit of redress and as such, cannot be enforced as fundamental or justiciable rights in Nigeria. Unlike the first generation rights, these rights only serve as directive principles for state policy and form the basis of Chapter II titled ‘Fundamental Objectives and Directive Principles of State Policy’ which provides that, It shall be the duty

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<sup>30</sup> Jacob, (n 14)

<sup>31</sup> Section 1(1) and (3)

<sup>32</sup> <<https://www.ecowas.int/treaties>> Accessed on the 17<sup>th</sup> of September, 2016.

<sup>33</sup> I Effiong, ‘Dasuki: Is The ECOWAS Court Judgment Binding On Nigeria?’<<http://saharareporters.com/2016/10/05/dasuki-ecowas-court-judgment-binding-nigeria-inibehe-effiong>>

<sup>34</sup> Jacob (n 14)

<sup>35</sup> Section 46(1) CFRN 1999.

<sup>36</sup> *Gov. Of Bornu State v. Gadangari* (n5)

and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or Judicial Powers, to conform to, observe and apply the provisions.<sup>37</sup> Furthermore, section 6(6) (c) of the Constitution provides that the judicial powers vested in the courts shall not extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of the constitution.<sup>38</sup>

It has been stated that the second generation rights which are essentially equalitarian and egalitarian in character are rooted on the belief that the attainment of certain level of social and economic standard is a necessary condition for the enjoyment of the civil and political rights. They require affirmative governmental action for their enjoyment. Section 13 of the CFRN 1999 provides that, 'It shall be the duty and responsibility of all organs of government, and of all authorities and persons exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of the fundamental objectives and Directive Principles of State Policy'. Consequently, the rights are not enforceable and no government or authority in Nigeria can be compelled to guarantee such rights but may only observe them while discharging their functions. The Supreme Court in *A.G of Ondo State v AG of the Federation and 35 others.*,<sup>39</sup> held that the foregoing section does not only impose a solemn duty to observe the mandate contained in Chapter II on all organs of government and persons exercising legislative, executive or judicial powers, but also on private individuals as well.

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<sup>37</sup> Section 13 in the 1979 and 1999 Constitutions and Section 14 in the 1989 Constitution

<sup>38</sup> T Fagbohunlu, 'The Legal Frame Work of Human Rights in Nigeria' in the CLO Annual Report on Human Rights in Nigeria 1990 (Lagos 991) 109

<sup>39</sup> [2002]9 NWLR (pt 772) 222 SC See also *Egugu v. The State* (1997) 9 NWLR (pt. 366) 1

## **The National Human Rights Commission**

In furtherance of the enhancement and enjoyment of human rights, the National Human Rights Commission has been established in the country by the National Human Rights Commission (NHRC) Act, 1995, now amended by the NHRC Act, 2010, in line with the resolution of the United Nations General Assembly which enjoins all member States to establish national human rights institutions for the promotion and protection of human rights.<sup>40</sup> The Commission is established to deal with all matters relating to the promotion and protection of human rights, investigation of alleged human rights violations, and enforcement of decisions of the Commission's Governing Council.<sup>41</sup> It monitors human rights in Nigeria, assists victims of human rights violations, and helps in the formulation of the Nigerian Government's policies on human rights.<sup>42</sup> It serves as an extra-judicial mechanism aimed at creating an enabling environment for the promotion, protection and enforcement of human rights and provides avenues for public enlightenment, research and dialogue in order to raise awareness on human rights issues within the country.<sup>43</sup> It is headed by the Executive Secretary who is also the Chief Executive Officer (CEO) and has six departments under its administrative structure including the Admin, LID, Finance and Accounts, Public Affairs and Communications, Planning, Research and Statistics as well as Monitoring and External Programmes.<sup>44</sup>

Since its establishment the Commission has demonstrated an expansive capacity to tackle issues of human rights through various activities, ranging from public enlightenment and education, investigation of complaints, mediation and conciliation, conflict resolution, peace building, research advocacy and training

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<sup>40</sup> <<http://www.nta.ng/uncategorized/20170718-all-you-need-to-know-about-national-human-rights-commission/>> Accessed on the 13<sup>th</sup> of October, 2016

<sup>41</sup> <<https://www.nigeriarights.gov.ng>> Accessed on the 13<sup>th</sup> of October, 2016

<sup>42</sup> Ibid

<sup>43</sup> (n39)

<sup>44</sup> Ibid

programmes on contemporary issues in the field of human rights.<sup>45</sup> It engages in series of educational and public enlightenment programmes to raise public awareness on human rights issues. The Commission regularly holds workshops, seminars, conferences and interactive sessions with relevant stakeholders. In addition, sensitization, education and enlightenment programmes have also been carried out by the Commission in collaboration with NGOs and CBOs, to raise awareness on human rights throughout the country.<sup>46</sup>

In addition to Federal Government funding, the commission receives assistance from international bodies in its quest to achieve its objectives in the form of funding and training of staff to be better personnel in the field of human rights protection. These bodies include the European Union, the Swiss Embassy, the United Nations Development Programme and the African Union. For instance, the United Nations International Children's Emergency Fund supported the human rights defenders project in partnership with the commission in 2012, the Open Society Initiative For West Africa (OSIWA) supported staff skilling-up project to facilitate implementation of the new National Human Rights Commission amendment Act (2010) and the McArthur Foundation (MF) supported the commission in implementing the National Action Plan (NAP) project for the promotion and protection of human rights in 2011.<sup>47</sup>

In order to give meaning to the human life, the commission on a daily basis receives numerous cases of human rights violation. For instance, between the years 2011 and 2012, the commission received not less than 6,000 complaints of human rights violation all over the country.<sup>48</sup> After receiving the complaints, the commission investigates alleged cases of abuse and reports on the status of human

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<sup>45</sup> <<https://www.nigeriarights.gov.ng/Activities.php>> Accessed on the 13<sup>th</sup> of October, 2016

<sup>46</sup> Ibid

<sup>47</sup> National Human Rights Commission Annual Report by the Executive secretary (2012) 6

<sup>48</sup> The National Human Rights Commission News Letter (2012) 22

rights in the country. It also assists victims in seeking redress, monitors prisons, engages in human rights education and helps the Government formulate policies on human rights. It enforces its power by protecting the poor, weak, vulnerable, and other victims of human rights violation by offering free services which are supposed to be accessible to the public.

Part of the commission's function is to deal with all matters relating to the promotion and protection of human rights guaranteed by the CFRN, the UDHR, the ICCPR and the ACHR.<sup>49</sup> In the Human Rights News which was published in 2011 for instance, the Commission partnered with the UNDP and the Democratic Governance for Development (DGD) on the 2011 "Election Security Project".<sup>50</sup> This project was carried in order to improve the capacity of the Nigerian Police force and other security agencies to provide election security during the 2011 election process and beyond. In the same year, the commission's staff collaborated with an NGO (Rights Nigeria Project) to hold a campaign for Mararaba/Nyanya residents to draw their attention to the need to stand up for their rights and to therefore approach the commission when they feel their rights have been abused.<sup>51</sup>

In 2013, the commission carried out trainings of police personnel in order to improve their capacities to discharge their duties in compliance with human rights standards. The commission also inspected police detention facilities nationwide so as to find out the condition of inmates and ensure compliance with human rights norms.<sup>52</sup> In 2014, the commission pressed the release of 10 awaiting trial inmates from Lafia prison.<sup>53</sup> In the same year, the report stated on pages 44 and 45 that the commission treated cases of human rights

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<sup>49</sup> (n 46) 2

<sup>50</sup> The National Human Rights Commission News Letter, (2011) 24

<sup>51</sup> SV Olugbolade, 'National Human Rights Commission of Nigeria and the Challenges of Human Rights Protection (2011-2015)' (2017) Published Dissertation of Babcock University, Ogun state, Nigeria 60

<sup>52</sup> National Human Rights Annual Report, (2013) 6 and 7

<sup>53</sup> National Human Rights Annual Report, (2014) 26

violation. some of which are sexual violence, domestic violence, women trafficking, forced marriage, child trafficking, child marriage, child abandonment, unlawful arrest and detention, extrajudicial killing, ethnic and religious discrimination and so on.<sup>54</sup> In 2016, the commission had General Buratai (Nigerian Chief of Army Staff) appear before its panel of investigation concerning the clash against the Shi'ite sect in Zaria, Kaduna state on 12<sup>th</sup> December, 2015, and urged the military to strike a balance between security and human rights in order to take away the feeling of societal fear of the Nigerian Military.<sup>55</sup>

Many challenges like illiteracy, poverty, rise in religious fanaticism, militancy and others have constituted great challenges to the enforcement of Fundamental Human Rights in Nigeria. However, the major challenge experienced by the commission in dispensing its functions, is the issue of limited funding in carrying out its activities. The Executive Secretary of the commission stated in the preface of the 2012 annual report that in light of the expanding responsibilities of the commission by virtue of the NHRC Amendment Act, the need to adequately fund the commission needs not be overemphasized.<sup>56</sup> As a result, even with all the funding from the federal government and other international bodies, more still needs to be done for the commission to effectively carry out its functions. Other factors militating against the commission is the issue of comfort and security of staff in the field. As sometimes, staff get ridiculed by policemen and even soldiers in the field. In addition, the Amendment Act provided the commission with greater autonomy, expanded powers and functions. However, despite the increased autonomy and powers of the commission, the judgments of the commission are not strictly adhered to.<sup>57</sup> The Commission operates a quasi-judicial function in litigation and prosecution of human rights violators and as such, does

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<sup>54</sup> Olugbolade (n 50)

<sup>55</sup> Ibid

<sup>56</sup> (n 46) 5

<sup>57</sup> Olugbolade (n 50)

not have the full rights and privileges like that of the high court. Ancillary to the above is lack of respect for the commission's awards by both citizens and the government. Thus, even though the commission has made efforts within the years since its establishment to protect the rights of citizens in the country,

### **Appraisal of the Right to life in Nigeria**

The right to life is the first fundamental right provided for in chapter IV of the Nigerian Constitution just like it is in all other international documents like the UDHR, the ICCPR, the ICESCR, the ACHPR and so on. It is 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.

Other permissible derogations which are recognised are provided for in section 45 to include in the interest of defence, public safety, public order, public morality or public health or 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. From the words of the provision, it is clear that the right

is not absolute but qualified<sup>58</sup> meaning that the right 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. While some of these limitations qualifying the right to life seem reasonable, others have been criticised. For instance, 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 (for instance, where the individual who is trying to escape is deemed very dangerous and the crime for which he is arrested is heinous). However, the force used must be unavoidable and not used with the intent to cause death.<sup>59</sup> In criticising the qualifications placed in this section it is argued that the provision where a person who is accused of any offence may be extra-judicially, yet lawfully killed in an attempt either to arrest him or prevent his escape from lawful custody, is a provision that gives so much powers to arresting officers who can easily abuse such powers.

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. However, it must be stated that the state should specifically avoid undue force which the circumstances do not call for, in suppressing such riot.<sup>60</sup> Furthermore, it is no violation to the right to life where the act complained about is in the defence of any person from unlawful violence or for the defence of property but the court has stated in *Ahmed v. The State*<sup>61</sup>, that for an accused person to

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<sup>58</sup> *Kalu v State* [1998] 13 NWLR (pt. 583) 531

<sup>59</sup> *Safa*, (n 12) 5

<sup>60</sup> *Ibid*

<sup>61</sup> (1999) 7NWLR (pt. 512) 641 SC



plead self defence as provided for under section 33 of the constitution 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. The Constitution fails to define the quantum of property which will justify such killing and it has been argued that ascribing or placing the value of property no matter the quantum, over and above that of human life is too harsh.<sup>62</sup>

Security operatives such as the Police are also allowed by law to impose limitations on the right to life in order to effect the lawful arrest of any person reasonably suspected of committing a crime,<sup>63</sup> prevent the absconding of a person in lawful detention, suppress a riot, insurrection or mutiny. However, it is an infringement of the right to life where people are extra judicially killed by police officers under the pretext that they are trying to escape from police custody. The provision provides a blank cheque for wanton killings by the police who, on the grounds of protecting private or public property, in carrying out an arrest, preventing an escape or suppressing a riot are allowed to kill. A lot of police brutality has been recorded in the country owing to the wide powers provided in the constitution. In *Isaac Edoh v. Edo State Commissioner of Police*,<sup>64</sup> the applicant's son was arrested by the police and paraded before the media in Benin, Edo State where he was accused of kidnapping. When the applicant visited the police station to secure his son's bail the police denied ever arresting his son. The tape of the son's media parade after he was arrested by the police was produced and played in court and the applicant identified his son. Upon coming to the conclusion that the applicant's son must have been killed extra judicially in custody, the court declared the killing illegal and awarded the sum of N15 million as damages to the

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<sup>62</sup> Jacob (n 14) 42

<sup>63</sup> See also Section 24 of the Police Act, 2004

<sup>64</sup> Unreported Suit No:B/460m/2011

applicant. Similarly in *Agbo v The State*,<sup>65</sup> it was held that the practice of policemen rashly bringing out their guns without any hesitation to pull the trigger at the slightest provocation is fatal and is a threat to the lives of citizens as constitutionally guaranteed.

It is important to note that euthanasia,<sup>66</sup> is not a lawful limitation to right to life in Nigeria and may be treated as a crime punishable under the Criminal or Penal Codes respectively.<sup>67</sup> So also is an attempt to commit suicide under Section 231 of the Penal Code Law. Also worthy of note is the fact that the constitution recognises the death sentence but has placed certain restrictions before the sentence can be legal.<sup>68</sup> The death penalty must be provided for by the law and only a court can provide for it. In other words, no body 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 by death. In *Okoro v The State*<sup>69</sup>, 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. In *Eronini v. Eronini*<sup>70</sup> however, the court stated that where the termination of the life of the accused person is carried out before his appeal, then it is a clear contravention of the provision guaranteeing the right to life

Whereas the right to life is constitutionally guaranteed, it is the duty of the Nigerian government to protect the lives of citizens. One of the measures of a government's effectiveness is in its ability

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<sup>65</sup> (2006) LPELR 242 SC

<sup>66</sup> which is the intentional killing by act or omission of a dependent human being for his or her benefit. see JA Sokefun, *Human Rights Law Course Guide*. (National Open University of Nigeria. 2008) 77

<sup>67</sup> Under the Criminal Code applicable in southern Nigeria and the Penal Code applicable in northern Nigeria, the killing of a human being by another is a crime under homicide amounting to murder or manslaughter depending on the intent with which the killing is done.

<sup>68</sup> Section 33(1) CFRN 1999

<sup>69</sup> (1998) 12 SCNJ 84 SC

<sup>70</sup> (2013) 14 NWLR (pt. 1373) 32 SC see also *Odulami v. Nigerian Navy* (2013) 12 NWLR (pt 1367) 20 SC

to carry out this primary function. In *Nkpa v Nkume*<sup>71</sup> 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. In the case of *AG Adamawa State v AG Federation*,<sup>72</sup> it held that citizens of Nigeria have a right to seek protection of their human rights from their government. 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 provide such protection. Hideous crimes like the boko haram killings, herdsmen attacks on different communities within the country, incessant kidnapping activities, armed robbery, and other crimes which threaten the quality of the right as guaranteed in Nigeria, is an indication of the breakdown in the care and security of the lives of the people by the government thereby, threatening the security and right to life of the citizens of Nigeria.

Aside from 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*<sup>73</sup> 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. It follows therefore that in the absence of clear positive prohibition which precludes an individual to assert a violation or invasion of his fundamental right against another individual, a victim of such invasion can also maintain a similar action in a court of law against another individual for his act that had occasioned wrong or damage to him in the same way as an action he

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<sup>71</sup> (2001) 6NWLR pt. [710] 543

<sup>72</sup> (2005) 18 NWLR pt. [958]

<sup>73</sup> (unreported) Suit no. S.C 240/2001, lead judgement delivered by Sunday Akinola Akintan. J.S.C. at Supreme Court of Nigeria, Abuja.

could maintain against the State for a similar infraction. 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

As has already been stated, the provisions of rights contained in chapter IV are justiciable while those contained in chapter II deal with mere fundamental objectives and directive principles of state policy. They are not justiciable, but are nonetheless not without any utilitarian value as they serve as aids to the interpretation of the other fundamental rights sections<sup>74</sup> and can be used as indicators or signposts by the courts on the road leading to realisation of the fundamental rights. It is based on this premise that this research argues that the Nigerian government has failed to protect the lives of citizens in the country thus putting a big question mark to the capacity of the government to live up to its primary responsibility of protecting its own people. In *Gabriel v. The State*<sup>75</sup> the court stated 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.

The right to life cannot be seen only in the light of the deprivation of life, but more importantly, in the light of the sustenance of life. Therefore, the right to life would be meaningful when it is not only deprived but also sustained. The constitution has already provided that 'no one shall be deprived intentionally of his life'<sup>76</sup> making it implied that remedies of the section arise only within the incident of unlawful deprivation of life<sup>77</sup> and imposes a positive duty on the government to provide safe and good

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<sup>74</sup> Korfe, (n 1)

<sup>75</sup> (2010) 6 NWLR (pt. 1190) 280

<sup>76</sup> Section 33(1)

<sup>77</sup> A Enabulele, 'The Right to Life or the Right to Compensation Upon Death' 100 <<http://www.ajol.info/index.php/jsdlp/article/viewFile/122618/112166>> accessed on the 15<sup>th</sup> of September, 2016

infrastructure that guarantees a dignified life to the citizenry.<sup>78</sup> As has severally been stated in this research, the right to life encompasses a wide variety of other rights which are dependent on the existence of life for their enjoyment; it is the nucleus of all other rights

Even though Nigeria is blessed with a lot of natural resources and is regarded as the ‘giant of Africa’, ordinary citizens in the country are deprived of basic amenities which affect the quality of life in the country. High level of corruption especially with top government officials whereby budgetary allocations meant for providing basic infrastructure, are siphoned in huge amounts making it impossible for the ordinary citizen to enjoy a qualitative right to life.<sup>79</sup> Most times even where the infrastructures are provided, the quality of the products are substandard thereby, affecting the quality of human lives in the country. Many of these substandard products and services can be seen in the kind of bad roads leading to numerous road accidents, low quality medicines, medical supplies, guns and other security instruments (which are usually substandard and inferior compared to those used by the herdsmen, militants or boko haram members thereby, putting the lives of the security officers at risk).

The right to healthcare 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*,<sup>80</sup> 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

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<sup>78</sup> Ibid 101

<sup>79</sup> UE Uwak, ‘Corruption in Nigeria’s Public Sector Organisations’ (2016) <<http://www.mcser.org>article>download>> accessed on the 17<sup>th</sup> of September, 2016

<sup>80</sup> (2005) AHRLR 151.

were to be restrained from further flaring gas in the applicants community.

The right to life can be affected by the failure to provide basic infrastructure that would reduce mortality rate. Nigeria as a country records so many deaths caused by bike and motor accidents because of bad roads as well as plane crashes due to substandard planes used in the country.<sup>81</sup> The right to food and sustenance is another example of an economic and social right that falls under one's right to life but is too is frequently ignored as a fundamental right to life.<sup>82</sup> It has been emphasised that the right to life presupposes the existence and availability to all of certain basic facilities such as food, health, shelter and education. For the right to life to be maintained it needs food which has to be produced by members of the society all of whom have this right to life. Thus the right to life is linked to the right to work in order to obtain the means of subsistence to procure food and shelter<sup>83</sup>

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.<sup>84</sup> 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 practises and beliefs. The right to life of a woman depends largely on her reproductive rights which

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<sup>81</sup> BBC News, 'Lagos plane Crash: Nigeria Suspends Dana Air License' (2012) <<https://www.bbc.com/news/world-african>> Accessed on the 17<sup>th</sup> of September, 2016

<sup>82</sup> JN Aduba, 'The Right To Life Under Nigerian Constitution: The Law, The Courts And Reality' (2011) *S.M.A. Belgore Chair Series* Nigerian Institute of Advanced Legal Studies 17

<sup>83</sup> S Uchegbu, 'The Concept of the Right to Life under Nigerian Constitution', in *Essays in Honour of T.O. Elias*, 151-152 cited in J.N. Aduba, *Ibid*, p. 3.

<sup>84</sup> *Ibid* 28

include on the number and spacing of her children. Matters of reproductive health were worsened in the past by the practice of female genital mutilation. The practice was aimed at the removal of clitoris in the cultural belief of curbing promiscuity in women. The practice was dirty, unhygienic and un-clinical. It constituted a cultural barrier against right to life as it exposed women to severe wounding and serious health hazards.<sup>85</sup>

On the whole, the capacity of the government of Nigeria to live up to its primary responsibility of protecting its own people is put to question and may be summed up as follows,

The sad commentary on the wanton neglect of Nigerian roads, and the link between budgetary allocations and corruption could also be seen in other areas of our national life. The basic infrastructure crisis Nigeria presently faces has arguably created the environment for avoidable deaths to thrive: those who escaped road accidents are likely to be deprived of their lives by police brutality; or the guns of armed robbers or political assassins, kidnappers, or religious extremists groups; those who escaped the guns may be caught up by a bomb or by starvation, if not by employment stampede.<sup>86</sup>

In most developed countries like the United States, Britain, Germany and so on, there exists the protection of human rights without any discrimination between the first and second generation rights. All are constitutionally and fundamentally guaranteed because

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<sup>85</sup> M Aniekan, 'Status and Limit of Human Rights: Right to Life under Nigerian Constitution, 1999 with Focus on Rural Women in Akwa Ibom State' (2014) (5) (26) *Mediterranean Journal of Social Sciences* <<http://www.mcser.org/journal/index.php/mjss/article/viewFile/5288/5105>> accessed on the 15<sup>th</sup> of September, 2016

<sup>86</sup> Enabulele, (n 76) p. 115

of the understanding that the economic, social and cultural rights give meaning and effect to the civil and political rights including the right to life and without which they cannot be enjoyed. In countries where the economic, social and cultural rights are not fundamentally guaranteed, their judiciaries make pronouncements that still give effects to those rights. For instance, even though the Indian Constitution like the Nigerian constitution makes the second generation rights non justiceable, the Indian judiciary through judicial activism has gone a step further to declare that the right to livelihood is an important facet of the right to life and stated that it is the duty of the state to provide such means of livelihood because the right to life is meaningless without a means of livelihood.<sup>87</sup> In *Chameli Singh v. The State of U.P* <sup>88</sup>; it was held that the rights to social and economic justice, the right to health and the right to live with human dignity with at least minimum sustenance and shelter are all rights which would go to make a man's life sustainable. Therefore, the enjoyment of the right to life cannot be meaningful if the protection and preservation of life itself is not guaranteed.

## **Conclusion**

Human rights are inherent to all human beings irrespective of their differences. The right to life being the most basic of them all cannot be enjoyed without the enjoyment of the others. The rights are so fundamental that they are recognised both internationally and locally in all parts of the world. One of the major yardsticks for assessing governments in different countries is based on the protection of human rights especially the protection of the right to life in such countries. 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 lost on a daily basis in the country with no one being held accountable for the loss and the economic, social and

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<sup>87</sup> Per Tipinis J. in *X v. Y Corporation and Another* (2002) 2 CHR 238

<sup>88</sup> (1996) 2 SCC 546



cultural rights which ought to give meaning to the right to life are not justiciable.

The research observes 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. On this basis, many countries have made both the first and second generation 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 has also been observed that because of the high level of corruption in the country, allocations meant for the provision of basic amenities are siphoned in huge amounts without any questioning and even where they are provided, the quality of the products are substandard thereby, affecting the quality of human lives in the country. In addition, many government officials including members of the armed forces and police use their offices to victimise, oppress and kill aimlessly on the grounds of the wide powers giving to them in the constitution.<sup>89</sup>

It is recommended that the rights contained in chapter II of the Constitution be made justiciable as in the case of USA, Britain, South Africa, and other countries so that the quality of lives in Nigeria is not just protected but enhanced. It is further recommended that there be a general orientation among government officials to respect the rule of law and provide efficient and effective services without abusing the powers giving to them or the offices they occupy. With qualitative education and corresponding employment opportunities, most security challenges like the activities of *boko haram*, kidnappers, armed robbers or other unwanted illegal groups in the country will be tackled. Judges should be proactive, liberal, independent, fearless and efficient so that just 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

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<sup>89</sup> Section 33 CFRN

thereby making the provisions of chapter II justiciable. On this ground the executive arm of government is advised to adhere to and respect these decisions. Furthermore activities of NGOs, human rights activists and other stake holders like lawyers be heightened to fight not just human rights abuses but also corruption and maintain causes of action for promoting good governance and for holding government accountable for failure to create a society conducive enough for the sustenance of life in Nigeria. Finally the National Human Rights Commission should be given more attention in terms of more funding to the commission, more powers to its officers and more respect to the awards given by the commission in aiding to fight human rights violations within the country.