

International and Domestic Dimensions Of the Right to Life

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Abstract: The right to life is a *prima inter pares* among human rights globally. This paper accordingly answers to the need to evaluate the promotion and protection of this right in international law and in domestic jurisdictions with a view to propagating a better and more effective observance of the right to life. Therefore, the paper has examined the legal instruments protecting the right to life in international law and under the Nigerian domestic legal system. The paper observed that there is universal acknowledgement and consensus relating to the need to protect the right to life as well as positive legislative actions to punish those in violation of this all important right. These legislative mechanisms had been critically evaluated in the paper and means of strengthening the protection of the right to life duly recommended.

Keywords: Human rights, right to life, global consensus, domestic jurisdiction, violation of rights.

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I. INTRODUCTION

The right to life is as sacred as life itself is. It entails that no one may be deprived of his life under any circumstance save as permitted by law in due observance of procedure allowed by that law. No human being may take the life of another neither may he put another's life in danger of loss. And no one may be an accessory to or after the fact of murder, or conspire with or procure another to deprive a human being of his life. The state has a duty not only to refrain from any act that may arbitrarily endanger or deprive the life of persons within her territorial jurisdiction but as well the duty to protect and safeguard the lives of all persons within her territory. This paper has examined the full extent of this right from international and domestic perspectives.

II. RIGHT TO LIFE IN INTERNATIONAL LAW

The right to life enjoys solid international protection in that its arbitrary violation or deprivation stands against the most serious rules of international law. In a plethora of international conventions and treaties, the safeguard of the right to life of the individual or of groups has become a *jus cogens* rule of international law backed by international customary law and practice. Violations, where they exist, become part of international crimes or offences that constitute *obligatio erga omnes* which are inderogable. It is observed that legal obligations which arise from the higher status of such crime include the duty to prosecute or extradite; the non-applicability of any immunities up to and including Heads of State; the non-applicability of the defence of obedience to superior orders; the universal application of these obligations whether in time of peace or war; their non-derogation under states of emergency; and universal jurisdiction over perpetrators of such crimes. International instruments that protect the right to life include the following:

Universal Declaration of Human Rights, 1948

Article 3 provides that everyone has the right to life, liberty and security of person. It is important to note that the Universal Declaration of Human Rights was originally not intended to be a legally binding instrument. In spite of this, its effect on the development of international human rights has been positively overwhelming. It opened the floodgate of consciousness on the subject and inspired later international and domestic human rights instruments that were to become binding. Aside of these, some of the rights it proclaims have become part of international customary law with a number of them like the right to life attaining the status of a *jus cogens* rule of international law.

International Covenant on Civil and Political Rights, 1966

Article 6 provides as follows:

1. Every human being has the inherent right to life. The right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present covenant.

United Nations Convention on the Prevention and Punishment of the Crime of Genocide¹

Genocide is a crime against humanity and refers to any criminal enterprise seeking to destroy, in whole or in part, a particular kind of human group as such, by certain means. Article 4 (2) of the Statute of the International Criminal Tribunal for the former Yugoslavia defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

- a. Killing members of the group,
- b. Causing serious bodily or mental harm to members of the group,
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,
- d. Imposing measures intended to prevent births within the group.
- e. Forcibly transferring children of the group to another group.

Article 4 (3) declares the following acts to be punishable:

- a. Genocide.
- b. Conspiracy to commit genocide.
- c. Direct and public incitement to commit genocide.
- d. Attempt to commit genocide
- e. Complicity in genocide.

Throughout history, there have been reported cases of genocide. Germany under Adolf Hitler exterminated millions of Jews in gas chambers before and during the Second World War. The Igbos faced targeted execution in Northern Nigeria in the 1960s which resulted together with other factors in the Nigeria -Biafra War. There was also large scale genocide in Rwanda championed by the Hutus against the Tutsi which led the United Nations to set up a tribunal for Rwanda.

The United Nations has specifically declared genocide a crime against international law. The extermination of millions of Jews and members of other national, ethnic and religious groups during the Nazi holocaust prompted the adoption of the genocide convention, which outlaws the crime of genocide. Article IV of the convention provides that persons committing genocide shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

The Geneva Conventions, 1949

The United Nations adopted the Geneva Conventions primarily to combat war crime. War crimes are violations of the laws or customs of war. Such violations include, but not limited to murder, ill-treatment or deportation for slave labour or for other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

Most of the offences under war crimes have been articulated by the United Nations under the Four Geneva Conventions of 1949 and their additional protocols namely:

¹ Came into force in 1951.

1. The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
2. The Geneva Convention for the Amelioration of the Condition of the Wounded and Shipwrecked Members of Armed Forces at Sea.
3. The Geneva Convention Relative to the Treatment of Prisoners of War.
4. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War.
5. Protocols I and II of 1977 Additional to the Geneva Conventions of 1949.

International Tribunal

Starting from the end of the second world war in 1945, several tribunals have been set up at one time or the other to try and punish individuals who have perpetrated acts that threatened the peace and security of mankind, committed crimes against humanity and war crimes. The first of this was the London Agreement for the establishment of an international military tribunal set up in 1946 to try the Nazi leaders for crimes against peace and humanity which was signed by France, United Kingdom, United States, and the then Union of Soviet Socialist Republics (USSR). This Agreement resulted to the Nuremberg trials which were followed in 1948 by the Tokyo International Tribunal for the Far East that convicted a number of Japanese leaders. And by Resolution 827 of 1993 the U.N. Security Council set up the International Criminal Tribunal for the former Yugoslavia with the statute mandating it to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or national in character, and directed against any civilian population: murder, extermination, enslavement, torture, rape, persecutions on political, racial and religious grounds, deportation, imprisonment, and other inhumane acts.

The Statute of the International Criminal Trial for Rwanda (ICTR) set up in 1994 punishes the same list of crimes but as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. Article 2 punishes genocide; article 3 punishes crimes against humanity; article 4 punishes violations of article 3 common to the Geneva conventions; article 6 emphasizes individual criminal responsibility; article 8 gives concurrent jurisdiction to ICTR and Rwandan national courts. Furthermore, by Resolution 1315 of 2000 the Security Council set up the Special Court in Sierra Leone to try those most responsible for human rights violations during the ten years of civil war in that country.

International Criminal Court

This court arose out of a long-standing desire over the decades at the international scene for a permanent international criminal court that would try and punish individuals that have violated international law especially as regards offences declared to constitute international crimes. Therefore, finally, the Rome Treaty of 1998 set up the International Criminal Court. The Hague for the trial of war crimes, crimes against peace, and genocide. The initial 18 member Panel was sworn in on 11th March. 2003.

It is to be noted that individuals are criminally responsible for international crimes. This was re-affirmed in the Genocide Convention of 1948 which provided for the punishment of individuals either by national courts or by an international criminal tribunal whether they are constitutionally responsible rulers, public officials or private individuals. Furthermore, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity was adopted by the United Nations General Assembly in 1968. By the operation of this convention there is no limitation as to the time a person may be arrested and tried for international crimes. Again, article 6 of the Statute of the Special Court for Sierra Leone emphasizes individual responsibility for international crimes and provides that a person who planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of any of the crimes listed in the statute shall be held individually responsible and punished irrespective of their official or governmental position, which same position shall not by any means mitigate their punishment.

Second Optional Protocol to the International Convention on Civil and Political Rights, Aiming at the Abolition of the Death Penalty

This protocol is anchored on the believe that abolition of the death penalty contributes to the enhancement of human dignity and progressive development of the right to life in particular and human rights in general. It was adopted under the auspices of the United Nations to further strengthen and enlarge the frontiers of the International Covenant on Civil and Political Rights, 1966.² Article 1 of the protocol provides that:

1. No one within the jurisdiction of a State Party to the present Optional Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

² See article 6.

By article 2, no reservation is admissible except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime. The State making such reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime. And the State having made such a reservation shall further notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the Abolition of the Death Penalty in all Circumstance, 2002.

This protocol was adopted by member States of the Council of Europe with the conviction that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings. The protocol strengthens the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. Protocol No. 6 to the European Convention concerning the Abolition of the Death Sentence signed at Strasburg on 28 April, 1983 did not excluded the death penalty in respect of acts committed in time of war or imminent threat of war, hence the need for Protocol No. 13 abolishing the death penalty in all circumstances.

Article 1 of Protocol No. 13 provides that the *death penalty shall be abolished*. No one shall be condemned to such penalty or executed. Article 2 prohibits derogations from the provisions of the protocol while article 3 forbids reservations on the applicability of the provisions of the protocol. article 5 provides that as between the States Parties, the provisions of articles 1 to 4 of the protocol shall be regarded as additional articles to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as such all the provisions of the said convention shall apply accordingly.

The African Charter on Human and Peoples' Rights, 1981

Article 4 of the Charter provides that: human beings are inviolable. Therefore, every human being shall be entitled to respect for his life and the integrity of his person and no one may be arbitrarily deprived of this right.³ The African Court on Human and Peoples Rights, the European Court of Human Rights and similar international judicial institutions are designed to secure compliance with international instruments providing for the right to life and other human rights and to complement activities of international criminal tribunals and the International Criminal Court in burnishing the sanctity of human life.

III. RIGHT TO LIFE IN NIGERIA

The right to life is adequately protected under Nigerian laws. But like most human rights, it is not an absolute one and may be deprived under circumstances permitted by law. The supreme law, the Nigerian Constitution, that guarantees it also provides for the circumstances under which it may be derogated. Section 33 of the 1999 Constitution provides thus:

33 (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a Court in respect of a criminal offence of which he has been found guilty in Nigeria.

(2) A person shall not be regarded as behaving been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary:

- (a) for the defence of any person from unlawful violence or for the defence of property;
- (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny

Remedy for Breach of Right to life

The severity of the punishment provided by our criminal laws for unlawful homicide, murder, or attempted murder attest to the great importance attached to the right to life in the country. Section 306 of the Criminal Code⁴ proclaims that it is unlawful to kill any person unless such killing is authorized or justified or excused by law. Section 315 of the Criminal Code aforementioned states that: *any person who unlawfully kills another is guilty of an offence which is called murder or manslaughter, according to the circumstances of the case*. Section 319 (1) imposes the death penalty for murder while section 320 prescribes life imprisonment for

³ The American Declaration of the Rights and Duties of Man (May 2, 1948); and the European Convention of Human Rights signed on November 4, 1950 and entered into force on September 3, 1953 also represent regional efforts to secure human rights.

⁴ CAP C 38, Laws of the Federation, 2004.

an attempt to commit murder. Section 325 punishes manslaughter with life imprisonment. Even attempting to take one's life by oneself (suicide) is a criminal offence and is punishable under section 327 by one year of imprisonment.⁵

Section 221 of the Penal Code⁶ punishes culpable homicide with death. Section 229 of the Penal Code aforesaid punishes attempts to commit culpable homicide with life imprisonment, or any less term, or fine, or both. Section 231 punishes attempt to commit suicide with a term of imprisonment extending to one year, or fine, or both. The Sharia Penal Code⁷ punishes with the same severity and contains similar provisions with the Penal Code on the subject. No one is justified for killing any person by reason that the victim consented to his being killed. Section 299 of the Criminal Code provides that: *consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused.*

When Life Begins

The scientific proof of the exact time when life begins and by extension ends may be safely left in the lands of medical jurisprudence which has explained the time of death, among other things by the theory of brain death. As a matter of law, the unlawful killing of a living human being as we know him is a criminal offence punishable by maximum penalty in all legal jurisdictions. Section 307 of Criminal Code stipulates that a child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.⁸ This provision is complemented by section 309 to the effect that when a child dies in consequence of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do such act is deemed to have killed that child. The language of this provision may lead to ambiguity in interpretation. Can a person be guilty of killing a child before he or she is born? That is to say, can the offence of murder be established against a person who kills an unborn child as section 309 appears to suggest?

Section 328 of the Criminal Code appears to answer this poser positively and affirmatively. It states that:

any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, she would be deemed to have unlawfully killed the child, is guilty of a felony, and is liable to imprisonment for life.

Notwithstanding, a community reading of sections 309 and 328 emphasizes that the event is one that occurs during delivery of the child and, for that matter, cannot reasonably be construed to extend to any act that occurs from conception and throughout the duration of the pregnancy, especially in the light of section 307.

Fortunately, the strain is lifted off the argument by sections 228, 229 and 230 of the Criminal Code and sections 232 and 233 of the Penal Code criminalizing and punishing abortion and forced miscarriage respectively.

IV. CONCLUSION

The right to life is strongly protected under international and domestic laws which confirm the fact that the right to life is the most important of all human rights. Anyone who is a party to the offence of murder, culpable homicide, infanticide or any other act of killing in circumstances not excused, justified, or authorized by law is liable in Nigeria to be punished by death upon conviction.

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⁵ Sections 300-305A of the Criminal Code equally imposes certain duties on persons aimed at the preservation of human life

⁶ CAP 89, LFN, 1990

⁷Penal Code Law applicable in Kano State of Nigeria.

⁸ Sections 228-230 of the Criminal Code deal with different offences of abortion and their punishment ranging from 3-14 years imprisonment.

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