

**THE RIGHT TO LIFE OR THE RIGHT TO
COMPENSATION UPON DEATH:
PERSPECTIVES ON AN INCLUSIVE UNDERSTANDING
OF THE CONSTITUTIONAL RIGHT TO LIFE
IN NIGERIA**

Amos O. Enabulele*

ABSTRACT

This paper discusses the right to life in its most inclusive sense. It argues that 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. Accordingly, that the right to life should be broadly interpreted to encompass all its components and that some of its important components are contained in the non-justiciable provisions of our Constitution. The paper further argues that by assimilating the provisions which the Constitution declares non-justiciable with the right to life, such provisions become justiciable without disturbing their otherwise non-justiciable character since they are not enforced on their own force but on the force of the justiciable right to life provisions of the Constitution.

Keywords: Right, Compensation, Life, Death, Constitution

* LLM, PhD (Lond.) BL, Chair, Committee on the Teaching of International Law, International Law Association, Nigerian Branch and Senior Lecturer, Department of Jurisprudence and International Law, Faculty of Law, University of Benin, Nigeria. email: amos.enabulele@uniben.edu.ng

I. INTRODUCTION

Section 33(1) of the Constitution of the Federal Republic of Nigeria (CFRN), 1999, provides that “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”. 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 open unto 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 when 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.¹ This is more so, as “unintentional” deprivation of life arising from acts or omissions which have the potential to cause death may outweigh what may properly be termed “intentional deprivation of death”. On the other hand, a realisation, that the clause “every person has a right to life” can stand by itself and sustain a cause of action even before death occurs, gives an inclusive 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.

Agreeably, the various rights that are here canvassed as part of the right to life are also provided for as separate rights in most human rights and constitution instruments, including the CFRN. The problem, however, as also exemplified in the CFRN, is that the autonomous application of the rights is inhibited by the fact that they are usually made to exist as non-justiciable provisions in constitutional texts. This, indeed, has made the inclusive interpretation of the right to life inevitable. For instance, a government may rely on the fact that an important right, as the right to a healthy environment (which is *sine qua non* to the sustenance of life), is not justiciable at the suit of a dying population who just wants their life preserved by safeguarding the environment from pollution occasioned by economic activities. An inclusive

1 This is what the writer shall refer to as the traditional approach to the right to life throughout this article.

understanding thus makes the safeguards of the right to life more certain and effective as well as emphasises, not only the right not to be killed, but also the right to be rescued from impending death.

In essence, this paper argues that Section 33 of the CFRN imposes a positive duty on the government to provide safe and good infrastructure that guarantees a dignified life to the citizenry. It argues that the judicial understanding of the constitutional text of the right to life in Nigeria has so far emphasised “the intentional deprivation of life” over the protection of life itself. The paper urges Nigeria courts to move away from this traditional approach and adopt a broader understanding of the right to life that affords an implementation of all the components of the right to life which have so far been obscured in the non-justiciable provisions of the Constitution. Importantly, it notes that the inclusive interpretation of text of section 33 is beginning to take root in lower courts and thus encourages the Supreme Court to place its imprimatur on this trend when the opportunity presents itself. In making the argument, the article highlights the progress made by courts in other jurisdictions having similar constitutional dichotomy between justiciable and non-justiciable rights.

The paper is divided into nine parts. Part one is the introduction; part two discusses what the writer referred to as the traditional view of the right to life; part three discusses the inclusive perspective to the right to life; part four discusses the essence of the inclusive application of the right to life; part five discusses the text of section 33 of the CFRN; part six discusses the narrow judicial application of the right in Nigeria; part seven argues for the adoption of the inclusive application of the right to life in Nigeria; part eight discusses the interface between the inclusive application of section and the non-justiciable provisions of the constitution; and part nine concludes the paper.

2. THE RIGHT TO LIFE

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 nucleus of all other rights. The traditional approach to the right to life views the right in a very parochial 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*.² 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. This could also be exemplified by the finding of the African Commission for Human and Peoples' Rights in *Organisation Mondiale Contre La Torture and Association Internationale des juristes Democrates) Commission Internationale des Juristes (C.I.J) Union Interafricaine des Droits de l'Homme/ Rwanda*, where the Commission found that the massacre of a large number of Rwandan villagers by the Rwandan Armed Forces and the many reported extra judicial executions for reasons of their membership of a particular ethnic group were series of violations of the right to life in article 4 of the African Charter on Human and Peoples' Rights.³

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 would explain this. In *Makaratzis v. Greece*,⁴ 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, for which 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*,⁵ the African Commission on Human Rights declared that arbitrary arrests, detention and torture were a violation of the right to life in article 4 of the African Charter on Human and Peoples Rights.⁶ It has even 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.⁷

The traditional approach, which is indubitably correctly applied in Nigeria, views the right to life as imposing only a negative duty on the State not to arbitrarily deprive a citizen of her life. This is in contradistinction to an inclusive application of the right to life, which combines the traditional view with the enforcement of the right in terms of the imposition of a posi-

2 [1986] 5 NWLR (pt. 45) 828

3 Communication 27/89, 46/91, 49/91,99/93

4 Application No. 50385/99

5 Communication 25/89, 47/90, 56/91, 100/93

6 *Ibid*, para 43

7 *Tanrikulu v. Turkey*, Application No. 23763/94 of July 8, 1999

tive duty on the government to take all reasonable steps to protect life. Following the inclusive understanding of the right, the Inter-American Court of Human rights, in *Juvenile Re-education Institute case*, declared that “[t]he 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)”.⁸

A major problem with the traditional approach is that it has the effect of excluding such other components (such as the right to health, food, healthy environment, etc) contained in the bundle conveniently wrapped up as the right to life. This has the effect of restricting the enforcement of the right to the occurrence of death and thus confining the right to the realm of a broken promise, for which compensation is a just and adequate remedy only when the government directly authorised the death. The right would mean nothing more than the right to compensation for unlawful death rather than a right that protects life from unlawful deprivation.

3. IS THE RIGHT TO LIFE IMPLIED IN OTHER RIGHTS?

To avoid this parochial view, courts in some jurisdictions 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, covering such components of the right to life as food, shelter, healthcare, healthy environment, etc. These provisions, being non-justiciable by virtue of section 6(6)(c) of the CFRN, are not enforceable on their own force. What courts in some jurisdictions have done is to enforce those essential components, not as autonomous constitutional provisions but as in-excludable components of the right to life.

Some of the components of the right to life which courts in some jurisdictions interpret and apply as rights imposing a positive duty on the State to protect a dignified life are highlighted below.

(a) 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

⁸ Judgment of September 2, 2004. Series C. No. 112, para 158

allow for a dignified life. The government would be in breach of the right to life, therefore, 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*,⁹ 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.¹⁰

(b) Right to Healthcare

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; medical care, among

9 *Villagran-Morales et al v. Guatemala*, 1999 Inter-Am. Ct. H.R. (Ser. C) No. 63, 144 (Nov. 19, 1999). Applauding the approach of the Court, Steven R. Keener & Javier Vasquez, 'A Life Worth Living: Enforcement of the Right to Health Through the Right to Life in the Inter-American Court of Human Rights', (2008-2009) 40 Colum. Hum. Rts Rev, 595, 597, opined that "the court took the idea that the right to life must be a right to a dignified life and began to enforce many elements of the right to health, finding violations even when the victims did not die and requiring government provision of food, water, sanitation, medicine and adequate medical care".)

10 *The Indigenous Community of Sawhoyamaxa v. Paraguay*, Series C No. 146 [2006] IA-CHR 2, para 153.

11 [1986] 4 SCC 37

others. In *Paschim Banag Khet Samity v. State of West Bengal*,¹¹ the Indian Supreme Court held that the right to emergency medical care was enforceable as a right to life under Article 21 of the Constitution of India. The court reasoned that the right to emergency medical care formed a core component of the right to health which in turn was recognised as forming an integral part of the right to life. Article 21 provides: “no person shall be deprived of his life or personal liberty except according to procedure established by law”.

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. How can it be said that the right of a people to life is protected by the government when the people are so isolated, geographically or financially, from medical services; safe drinking water; security of lives and properties, etc.?

(c) Right to Livelihood

The Indian Supreme Court has also defined the right to life to include the right to livelihood.¹² In *Mohini Jain v State of Karnataka*,¹³ the court was asked to determine the constitutionality of a capitation fee imposed on those who wished to gain admission into a medical school. The fee had the effect of placing the school beyond the reach of the poor. The court relied on the right to life in article 21 of the Constitution of that country to declare the fee unconstitutional. The court used the opportunity to make a definite statement on some of the necessities that are implied in the right to life. It declared:

We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself.

The same reasoning was employed by the Inter-American Court of Human Rights in the *Indigenous Community of Yakye Axa v. Paraguay*,¹⁴ 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

12 *Olga Tellis v. Bombay Municipality Corporation* [1985] 2 Supp SCR 51. Here, the court declared that it was a breach of article 21 to evict pavement and slum dwellers from Bombay city. In *ASK v. Government of Bangladesh*, Writ No. 3034 1999, the right to life was held to include the right not to be deprived of livelihood and shelter.

13 1992) AIR 185

14 Series C No. 125, [2005] IACHR 6,

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*,¹⁵ 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.

(d) Right to Education

In *Unni Krishnan, J.P., v. State of A.P. and Others*,¹⁶ the Supreme Court of India was seised with the determination of the nature of rights contained in the non-justiciable article 45 of the Constitution of that country. The article provides that “the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children until they complete the age of fourteen years”. The court held that the passage of 44 years since the enactment of the Constitution had effectively converted the non-justiciable right to education of children under 14 into an enforceable right. The court further 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.

The real connection between the right to life and education becomes obvious 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, she 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.

Therefore, the right to education is arguably not confined to classroom education alone, but it extends to all informal technical and other training that enable individuals acquire the needed skills for their economic good.

(e) Right to Healthy Environment

Courts in other jurisdictions 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

15 (n 9), para 144

16 [1993] 4 Law Reports of the Commonwealth, February 4, 1993.

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. This alone is a recipe for crimes and the further distortion of the already overcrowded urban environment, which singularly or cumulatively diminishes the life-span of citizens – a contaminated and an unhealthy environment definitely has a direct effect on life expectancy.

In realization of the importance of the available of the means of sustaining life to the right to life, it was held in the Indian case of *M.C.Mehra v. Union of India*,¹⁷ 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. Similarly, in *Shela Zia v. Water and Power Development Authority (WAPDA)*,¹⁸ 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 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 does follow 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.

4. THE ESSENCE OF THE INCLUSIVE CONSTRUCTION OF THE RIGHT TO LIFE

What the courts have done in the jurisdictions mentioned above is to situate the right to life within its proper context of the prevention of wasteful deaths, thereby giving it a more purposive definition and application than its mere confinement to compensation after death had occurred – a clear case of medicine after death. Seen in this sense, the right to life

17 [1987] All Indian Reports (AIR) 1086

18 [1994] PLD.A16

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 made by the Inter-American Court of Human Rights in *Velásquez-Rodríguez v. Honduras*, where it affirmed that the right to life implies an obligation on the part of State Parties to take reasonable steps to prevent situations that could result in the violation of that right.¹⁹

It should be stated, however, that the components of the right to life are not limited to those mentioned above. The list is actually open-ended, as a cause which is ordinarily not actionable within the precinct of the right to life, can become so actionable, if in the circumstances of a particular case, it poses a threat to the life and well-being of the litigant. The core element in this robust approach is the attainment of a dignified life for the individual. Again, this point has been variously emphasised by the Inter American Court of Human Rights. In the *Yakye Axa case*, the court reasoned:

Essentially, this right [to life] includes not only the right of every human being not to be arbitrarily deprived of his life, but also the right that conditions that impede or obstruct access to a decent existence should not be generated. 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 fulfilment 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.²⁰

From this reasoning of the Court, it could be gleaned that the causes that are enforceable as components of the right to life are broader in relation to persons who are vulnerable and at higher risk than people who do not fall into this category.

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 citizen's life are theatrically and persistently taken away by avoidable

19 Judgment of July 29 1988 Para 188

20 (n 14), p. 161-162

deaths: whether from road accidents arising from bad roads or poorly regulated driving standards; or deaths resulting from the barrel of armed robbers' guns; or those of politicians' dogs of intimidation and assassination; or from extremists' bombs, 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. The more the failure of government in these regards, the more impunity those directly responsible for the state of affairs enjoy and the more they prosper in the execution of their evil machinations. These are the first pieces of evidence to assess, while measuring the level of compliance of government with its obligation to guarantee the right to life, as these life-wasting catalysts are the first evidence of the breach of the right to life even before death results.

This is so much so that even when government has been shown to have taken the requisite steps, the European Court of Human Rights has said that government is yet under an obligation to effectively investigate the cause of death in every individual case. This, perhaps, is not just for the purpose of punishing the perpetrators but for the more important reason of ensuring the perpetrators do not have the opportunity of prospering in their evil enterprises and also to prevent a reoccurrence of death arising from wanton disregard to public health safety. This ultimately protects the life of the immediate or remote victims of the perpetrators.

5. THE CONSTITUTIONAL TEXT

As earlier mentioned, the key elements of the full text of section 33 of the CFRN are, "every person has a right to life" and "no one shall be deprived intentionally of his life". All the other parts of the provision deal with instances, where the right to life may be derogated from. The section did not attempt to define the content of the right to life and, therefore, not exhaustive. This is understandable; no constitutional document is expected to cover minute details of possible eventualities. It is for the judiciary to give life and flesh to the bare letters of the law in a manner that advances the intent of the law-giver and best effectuates the law. The fact that the CFRN did not define the right to life in section 33 in the light of its various components discussed above, does not exclude them from the purview of the constitutional text of the right to life, neither does their inclusion in Chapter II of the Constitution make the right to life and its Chapter II components mutually exclusive.

In this wise, courts in some jurisdictions have shown themselves a wise

harbinger for the Nigeria Supreme Court in the manner the courts in those other jurisdictions have inclusively used the bare minimum right to life guaranteed in their respective Constitutions to highlight the implicit content of the right to life. As shown above, the courts have achieved this by expansively interpreting the right to include its implicit aspects which are commonly confined to realm of unenforceable social and economic rights in many constitutions.

6. THE JUDICIAL UNDERSTANDING IN NIGERIA

Aside isolated High Court cases, such as *Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited (Shell & Nigeria National Petroleum Corporation (NNPC))*,²¹ the Nigerian case law on this point is yet to grasp the progress already made by both municipal and international courts in the realistic application of the right to life. The parochial understanding of the right to life appears still to be controlling in the conception and reasoning of the Supreme Court and of policy makers in Nigeria. This partly explains why the constitutionally guaranteed right to life is hardly litigated before Nigerian courts. Hence, the view of this writer that the right to life is yet to be taken beyond the traditional understanding as applied in *Nasiru Bello v. AG Oyo State*.²²

In *Jonah Gbemre v. Shell*, the plaintiff sued Shell Nigeria, NNPC and the Attorney 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.

7. TOWARDS AN INCLUSIVE APPLICATION OF THE RIGHT TO LIFE IN NIGERIA

The danger in the prevailing approach in Nigeria is that it practically renders the right to life meaningless by allowing events that denigrate

21 Suit No. FHC/B/CS/53/05/FHC, 14 November, 2005 cited in J.N. Aduba, 'The Right to Life under Nigeria Constitution: the Law, the Courts and Reality', (Lagos: Institute of Advanced Legal Studies, 2011) p. 6.

22 (n 2)

the right to continue and thereby overwhelm the right to life. 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; it covers the destruction of a person's means of livelihood and thus making it impossible for the person to afford the basic necessities of life. The list is endless; it goes way beyond compensation for unlawful deprivation of life to cover everything that negatively impacts on a dignified life.

In other words, such other rights as right to privacy, fair hearing, religion, dignity (to mention a few), appertain to individuals as living beings, and as rights which are fundamental to the enjoyment and preservation of life. These rights are not ends in themselves, their fundamental nature lies in their ultimate aim of ensuring a healthy and dignified life: they form part of the package wrapped up in the right to life. Indeed, "when the right to life is not respected, all the other rights disappear, because the person entitled to them ceases to exist".²³ Rightly put:

the right to life presupposes the existence and availability to all of certain basic facilities such as food, health, shelter and education. The right to life to be maintained 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 means of subsistence to procure food and shelter...²⁴

The connection of the right to life to adequate 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 lack of good infrastructure and adequate security of lives and property. This becomes very worrisome when confronted with the fact that thousands of Nigerians die from road accidents and attacks by criminals: deaths that would, perhaps, have been avoided if government was truly alive to its responsibilities. It

23 Yakye Axa, (n 14), para 161; Juvenile Re-education Institute, (n 9), para 156

24 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, (n 21), p. 3.

is on record that a total of 7, 850 lives were lost to auto crash and 27,000 sustained injuries between January 2010 and October 2010, alone.²⁵ This was barely a year after the Senate Committee on Road Contracts reported that over Three Hundred Billion Naira was misappropriated from road contracts between 1999 and 2003.²⁶ Only recently, the aviation industry was enmeshed in massive corruption scandal as a time that planes were falling from the sky, destroying lives and properties of Nigerians. This is not to mention the number of Nigerians that have died from bombs and small weapons within the last one year,²⁷ even as the country continues to bend under the massive weight of security budget and security votes. In analysing the road accident statistics released in 2011 by the Federal Road Safety Commission (FRSC), a newspaper reported as follows:

According to the Corps Marshall and Chief Executive of the FRSC, Mr. Osita Chidoka, in the four months (December 2009-March, 2010), 7, 737 road accidents were recorded in the country. This resulted in the death of 1,056 persons... if interpreted, it means 264 people die monthly on our roads.... These figures are alarming, considering the fact that the actual figure may be higher that what has been given by the FRSC.... The grim statistics mirror the global death toll on Nigerian roads which is conservatively and currently put at 1.2 million annually. According to the Road Safety, the causes of accidents include bad roads ... and non adherence to road safety rules and regulations.²⁸

When viewed in this light, one begins to see the inextricable connection between the right to life and the failure to provide 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.

25 See Vanguard Newspaper of November 18, 2010, quoting Save Accident Victims of Nigeria (SAVAN). SAVAN even stated that the figure may be higher as not all accidents were reported.

26 See the Guardian Newspaper of October 7 and 12 2009.

27 In a recent report, the Chief of Defence Staff, Air Chief Marshall Oluseyi Petirin, admitted that "boko haram has killed over 1,200 people in Nigeria" – the Vanguard Newspaper, March 11, 2012.

28 National Accord Newspaper (online) <http://www.nationalaccordnewspaper.com> > (accessed March, 25, 2012)

Indeed, 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 telling reason why section 33 CFRN can no longer be restrictively interpreted. A government that allowed a whopping Three Hundred Billion Naira to be misappropriated from road contracts (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 avoidable accidents resulting from the bad state of the roads for which the money was budgeted. In any event, it is the government that allowed the funds allocated for fixing the roads to be misappropriated; it is government that must take responsibility.

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. Need we even mention lack of adequate medical care and sanitation? On the whole, it is the duty of the Nigerian government to explain how the position of Nigeria as number 181 on the life expectance table with a life expectancy of 50.26 years for its citizens,²⁹ correlates with the constitutionally guaranteed right to life. By this ranking, life expectancy in Nigeria is higher than that of only 17 out of the 198 countries assessed by the United Nations Department of Economic and Social Affairs. This is even so as Nigeria is a large producer of crude oil.

When these naked 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.

29 United Nations World Population Prospects: 2012 Revision

8. THE IMPLICATION OF SECTION 6(6)(C) ON AN INCLUSIVE APPLICATION OF THE RIGHT TO LIFE IN NIGERIA

It is important to stress here that this paper is not advocating that the constitutional provisions precluding the enforcement of Chapter II be ignored by Nigerian courts. The point being made here, and which is clear from the inclusive application of the right to life, is that most of the socio-economic rights contained in Chapter II cannot be neatly sieved away from the right to life. This is particularly in view of the lessons from other jurisdictions, which show that some of the non-justiciable rights in Chapter II are more inclusive to the right to life than they are exclusive thereto. The intricate connection of some items in Chapter II to the right to life in section 33 is obvious from the following Chapter II provisions: 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”; section 16(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”.

Some may opine that the court is not best suited to adjudicate matters contained in Chapter II. Such arguments are based on the assumption that since Nigeria operates a system of separation of powers which places the power to allocate resources within the sphere of executive and legislative prerogatives; the use of socio-economic rights to enforce a positive duty on the political organs of government to allocate resources to certain areas – say education – is a violation of the doctrine of separation of powers. There is also the argument that the problem becomes particularly complex when the judgment carries budgetary implications.³⁰ Accordingly, the following questions are often asked: In relation to available resources in a certain fiscal year, what is an appropriate percentage of the government’s budget that has been spent on housing, education, and so forth? Put in another way, considering only available resources, is the state doing its best to address the issue of adequate housing [good roads, security, health, education] within such resources? That is a difficult question. How can judges decide this?

³⁰ John Cantius Mubangizi, ‘The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation’, (2006) 2 Afr J. Legal Stud 1, 4

First of all, we do not know much about this, and secondly, this amounts to great intervention on the work of parliament and the executive. The elected representatives not judges must decide between health, education...when allocating resources³¹

In a similar vein, it has been admitted even by the progressive Indian Supreme Court that:

No State or country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision for facilities cannot be unlimited. It has to be to the extent finances permit.³²

This paper agrees with the views of the learned Indian court. As such, what is being advocated here is not an autonomous application of the Chapter II provisions, rather what is being advocated is the purposive application of the right to life to reflect its full components duplicated in Chapter II. What Nigerian courts are being urged to do is to enforce the right to basic infrastructure (the absence of which has been responsible for the avoidable death of Nigerians) as part of the right to life, without recourse to Chapter II. By so doing, the courts would simply avoid the non-justiciable character of Chapter II without actually violating the constitutional stipulation of non-justiciability in section 6(6)(c).

That said, it is pertinent to emphasise that the question is more intricate than the mere availability of resources; it implicates the more complex process of the effective allocation of available resources and accountability. The argument of lack of resources to fix strategic Nigerian roads, for instance, can hardly hold water in a country where Three Hundred Billion Naira road budgetary allocation was misappropriated within 10 years. It is all the more ridiculous and highly insensitive to general public good for a government that is not accountable in the use of the resources at its disposal to plead scant resources in order to excuse itself from providing basic necessities that guarantee a dignified life for its citizens. It has been argued along this line, and rightly too, that:

31 Albie Sachs, 'Enforcement of Social Economic Rights' (2006-2007) 22 Am. U. Int'l L. Rev. 673, 678

32 *Consumer Education and Research Centre v. Union of Indian*, 3 SCC 42 (1995). Also see Mubangizi, (n 30), p. 3.

In order for a State Party to be able to attribute its failure to meet at least its minimum core [human rights] obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.³³

Can the Nigerian government really plead lack of available resources for the massive failure of life sustaining infrastructure? Is it not obvious to Nigerians and the world at large that the present state of affairs is the direct product of corruption and mismanagement of public funds? By this ill-conceived distinction, the government is excused from being held accountable by the ordinary process of the law for failing to provide such basic life sustaining essentials as security and good roads, yet the government, like *Oliver Twist*, sits on the vast resources of the nation and milks the citizens dry through the burden of corruption and taxation. But when a citizen goes to court to demand a meaningful and happy life through the provisions of basic amenities, the same government pleads non-justiciability because what the citizen seeks (which is ordinarily within the province of the right to life) has been specifically mentioned in Chapter II. This should not be; logic and common sense show that the right in section 33 of the Constitution is fundamental to the individual who is alive, and not the dead. Otherwise it is no right at all.

To continue to maintain that the right to life is actionable only when death occurs, questions the very essence of the right as a human right; it becomes more of a posthumous right. Indeed, how did the framers of the Constitution intend to guarantee the right to life in Nigeria, when the Constitution would not guarantee the security and welfare of citizens?

In order to fully appreciate the argument for an inclusive application of the right to life, it is worth considering the following questions: how can a dignified life be achieved without an enforceable duty on government to “provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation”? Of what essence is the bare “right to life” provision, where citizens cannot go to court to challenge the government on the general state of insecurity, bad roads, poor health services and a general dearth of basic services in the country? Does the mere absence of these basics not threaten the life of citizens and limit their freedom and happiness? The answer to these questions invariably confirms rather than rebuff the inclusive application of the constitutional text of the right to life.

33 General Comment 3, The Nature of State Parties’ Obligations (Article 2 Para 1 of the CE-SCR (5th Section, 1990), cited in Mubangizi, *ibid*, p. 4

9. 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. The right to life in section 33 of the CFRN arguably encompasses all other rights which appertain to individuals, as living beings, and which are essential to maintaining that status of a living being. Accordingly, deaths arising from the failure of government to address the major causes of avoidable deaths – bad roads and lack of adequate security – are attributable to the government as a clear breach of section 33.

Considering the positive trends from other jurisdictions³⁴ in which courts have transformed political commitments through the indivisibility of human rights into legal, economic and social reality and in view of the neutral nature of human rights generally, there is a need for Nigerian Courts to follow suit by using the right to life as the tool for promoting good governance and for holding government accountable for failure to create a society conducive to the sustenance of life.³⁵ Indeed, 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 vulnerable groups in the society from all manner of interests that can impede or completely annihilate the enjoyment of their status as human beings. This is what the Nigerian government must be seen to be doing at this time that life expectancy in Nigeria is at its lowest ebb.

It is also incumbent on lawyers to begin to frame cause of actions bothering on the socio-economic aspects of the CFRN in the light of the civil and political rights to which they are associated. It is hoped that Nigerian courts would support this initiative with the aim of making the safeguards in our constitutional bill of rights more effective. For unless, and until, the courts lend themselves to the suffering mass of the Nigerian people as the trusted tool for social engineering, the tool of criminality, expressed in corruption, armed robbery, kidnapping, terrorism and even drunk driving, would continue to overwhelm law and order in Nigeria.

34 E.g. South Africa, Pakistan, India, etc

35 See Arambulo, K., *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights: Theoretical and Procedural Aspects*, (Oxford, Hart Publishers, 1999) 450-451, (arguing that, the justiciability of socio-economic rights flows from the interdependence and indivisible nature of all human rights. With specific reference to Nigeria, Kitty argued that the so-called fundamental rights (as contained in chapter IV of the Nigerian Constitution), will become meaningless where the socio-economic (and environmental) rights of citizens are undermined.