

## RIGHT TO LIFE UNDER LEGAL AND JURISPRUDENTIAL STANDARDS: IMPLICATIONS FOR NIGERIA<sup>1</sup>

### Abstract

*Life is of the essence in every human existence, and protection of this right is of global concern. The right to life enshrined in many legal instruments is as old as civilization. Although it is not an absolute right yet no one has the right to take his or another's life unlawfully. Neither law nor morality welcomes such rascality. In a civilised and well informed society, the life of every individual is importantly appreciated and adequately protected. Today, despite the Universal Declaration of Human Rights (UDHR) 1948, and other domestic and international legal provisions for the protection of the right to life, the right to life has in practice remained under constant threat even by world leaders. This paper discusses jurisprudence of life bringing to fore the historical background and evolutionary concept of life. Secondly, it examines life in the indigenous culture having the original Igbo tradition in focus. It further discusses some legal instruments for the protection of the right to life and the effectiveness of the Universal Declaration of Human Right in safeguarding the right to life in Nigeria and the globe. Recommendations are made.*

**Key words:** *Jurisprudence, Human Life, Universal Declaration, Human Right, Nigeria*

### 1. Introduction

The right to life is one treasure that is cherished in every legal system. In the traditional society, the life of every individual member has important meaning to the locality so much so that the right to take life was reserved for the gods except in very rare occasions. Traditional societies had their laws that respected and protected each other's right according to their understanding. The right to life is sacred; that is why several laws are made towards its protection. Thus, legal protection of fundamental rights has been a unifying ideal that brings people of different nationality together. The reason is simply because every criminal justice issue anywhere in the world is a question of human right, such as the question as to how does it affect the human rights of the victims. However, the continuous disregard for life by some sovereigns in their quest for power suggests a weakness in the universal legal instruments for the protection of the right to life.

### 2. The Meaning and Concept of Life

The word "life" is of Germanic origin.<sup>13</sup> Although commonly possessed by every living being, 'life' is the most complex of all values. To date no one has succeeded in comprehending the intricacies of human life. Yet in the midst of this entanglement, life is still very dear to humanity. Despite various efforts to unravel its complexity and origin, it remains an eluding puzzle so that opinions abound today regarding the meaning and origin of life. Religion affirms that life is of a supernatural origin.<sup>14</sup> Early philosophical thoughts hold that life arose from inanimate matter by spontaneous generation.<sup>15</sup> With the growth of science, evolution and genetic hypothesis came up too.<sup>16</sup> It is pertinent to state here that the life this writer is concerned with is the human life. From philosophical perspective, Plato perceives life as attaining the highest form of knowledge.<sup>17</sup> According to Aristotle, life is the highest good which is

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<sup>13</sup> *Concise Oxford English Dictionary* 11<sup>th</sup> ed. p. 823.

Germanic is an unrecorded ancient language from which the Germanic languages developed. It is the branch of the Indo European language family which includes English, German, Dutch, Frisian and the Scandinavian languages.

<sup>14</sup> Genesis 1:1-31. *The New Jerusalem Bible, Pocket Edition*, (Darton: Longman & Todd Ltd, 1990).

<sup>15</sup> P Edwards, ed. *The Encyclopedia of Philosophy* Vol. 3 (New York: Collier Macmillan Publishers, 1972) p. 477.

<sup>16</sup> C Darwin: *The Origin of Species* (1859) cited in P. Edwards, *ibid.*, p. 965.

<sup>17</sup> Rembrandt: *Philosophers in Meditation* [http://en.wikipedia.org/wiki/meaning\\_of\\_life](http://en.wikipedia.org/wiki/meaning_of_life). p. 6. Retrieved 27/12/2009.

desirable for its own sake.<sup>18</sup> For the Epicurean, life is pleasure.<sup>19</sup> And for Stoic philosophers,<sup>20</sup> life is freedom from suffering. Jeremy Bentham defines life as the “greatest happiness principle.”<sup>21</sup> Yet according to Marxism and communism, the meaning of life is to serve one another in peace and with integrity as equal and just beings.<sup>22</sup> The existentialist says that life is what one makes out of it. But the Naturalist insists that the meaning of life is to care for and look after nature and the environment.<sup>23</sup> Finnis is of the view that “life signifies every aspect of vitality.”<sup>24</sup> Life is often discussed from a functional perspective which is rather relative. The average person would also think of life in his/her own terms.<sup>25</sup> There is the tendency to define in familiar terms but most often the fundamental truth may not be familiar.

According to a dictionary definition,<sup>26</sup> life is the condition that distinguishes animals and plants from inorganic matter including the capacity for growth, functional activity and continual change preceding death; the existence of an individual human or animal. From a physiological perspective, life is seen as any system capable of eating, metabolizing, excreting, breathing, moving, growing, reproducing and being responsive to external stimuli.<sup>27</sup> And a visitor from another planet, judging from the enormous number of automobiles on the earth and the way in which cities and landscapes have been designed for the special benefit of motor cars,<sup>28</sup> might well believe that automobiles are not only alive but the dominant life form on the planet.<sup>29</sup> Even a biochemical definition may see life in a different way.<sup>30</sup> And from a genetic perspective, life is a system capable of evolution by natural selection.<sup>31</sup> A Jewish existentialist<sup>32</sup> attributes the meaning of life to man’s encounter with God.<sup>32</sup> Schopenhauer has an entirely different opinion altogether. Regretting the reality of death, Schopenhauer says:

It is absurd to speak of life as a gift as so many philosophers and thoughtless people have done. It is evident that everyone would have declined such a gift if he could have seen it and tested it beforehand. To those who assure us that life is only a lesson, we are entitled to reply. For this very reason I wish I had been left in the peace of the all-sufficient nothing, where I would have no need of lessons or of anything else ....<sup>33</sup>

In another text,<sup>34</sup> Schopenhauer made clear his reason for this pain of regret. He says:

All our pleasures and joys disappear in our hands, and we afterwards ask astonished where they have gone. Moreover, a joy which no longer exists does not count; it counts as little as if it has never been experienced at all. That which has been, exists no more, it exists as little as that which has never been. But of everything that exists

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<sup>18</sup> *Ibid.*

<sup>19</sup> B Russell, *A History of Western Philosophy*, (New York: Simon and Schuster, 1946) p. 7.

<sup>20</sup> Rembrandt, *loc.cit.*, p. 1.

<sup>21</sup> R Frederick: *Classical Utilitarianism from Hume to Mill*. (Routledge 2003) P. 28 cited in Rembrandt, *ibid.*, p. 8.

<sup>22</sup> Rembrandt: *op.cit.*, p. 9.

<sup>23</sup> *Ibid.*, p. 10.

<sup>24</sup> MDA Freeman, *Lloyds Introduction to Jurisprudence* 7<sup>th</sup> ed. (London: Sweet & Maxwell Ltd., 2001) p. 133.

<sup>25</sup> R P Gwinn, *et al: The New Encyclopedia Britannica* Vol. 22, 15<sup>th</sup> Ed. (1768) p. 964.

<sup>26</sup> *Concise Oxford Dictionary* 11<sup>th</sup> ed. *op cit.*, p. 823.

<sup>27</sup> R P Gwinn *et al, loc.cit.*, p. 964.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> E Fackenheim, *Judaism and the Meaning of Life*, cited in P Edwards, *Encyclopedia of Philosophy, loc.cit.*, p. 467.

<sup>32</sup> *Ibid.*

<sup>33</sup> Schopenhauer, *The World as Will and Idea*, Vol. III p. 390, cited in P Edward *loc. cit.*, p. 467.

<sup>34</sup> Schopenhauer, *The Variety of Existence” in the Will to Live*, p. 229 cited in P Edwards *loc.cit.*, p. 468.

you may say, in the next moment, that it has been. Hence something of great importance in our past is inferior to something of little importance in our present, in that the latter is a reality, and related to the former as something to nothing.

For Schopenhauer life has no meaning if living will not be permanent. This writer wonders if Schopenhauer had a second thought about how the world would look like, if that type of permanence were to exist. Nonetheless, Christianity rather tells us the purpose of life which is to seek divine salvation through the grace of God and intercession of Christ.<sup>35</sup>

In the traditional Igbo context, for example, life is the highest good, and “man” is the beauty of life; therefore, life is held sacred. Anything that will lead to loss of this life is abhorred and deemed abominable. Should one commit suicide the person has no burial right, he/she is buried quietly in the evil forest. Killing another is one of the worst crimes in Igbo land, so much so that a person, who kills intentionally, in most cases, is given rope to hang himself/herself.<sup>36</sup> However, this will be discussed in detail in the latter part of this paper. Nonetheless, if this writer should speak in rhetoric, “life” is “life.” There is no better language to depict the very meaning of life than using the word itself. In another divide, it is submitted that life is that which determines our existence or being, distinguishing between the living and the dead. The definition of life as a concept is very elusive and seems rather functional.

### 3. Origin of Life

It is biblical that in the beginning God created heaven and earth.<sup>37</sup> Jerome’s Biblical commentary says that the whole visible world came into being as a result of sovereign divine activity. Thus creation is the beginning of history,<sup>38</sup> and therefore God made man in His own image and likeness.<sup>39</sup> Despite various assumptions about the origin of life, it is axiomatic in the majority opinion that life originates from God who made human beings pro-creators to continue the work of creation by the simple command “Be fruitful and multiply, fill the earth and subdue it.”<sup>40</sup> This he made subject to his overriding power, so that creation rather than being static remains a continuing process that endures as long as the world itself endures. Today, in science and anthropology it is called reproduction and evolution respectively.

There is also the evolutionary understanding of life. The word “evolution” originates from the Latin noun “*evolutio*” which means “unrolling.” It dates back to the 17<sup>th</sup> Century.<sup>41</sup> Evolution is the process by which different kinds of living organisms are believed to have gradually developed from earlier forms, especially by natural selection.<sup>42</sup> From this concept came the idea about the possibility of spontaneous generation, the activity of self-replicating RNA,<sup>43</sup> and the notion that the *homo sapiens* is

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<sup>35</sup> The Baltimore catechism: <http://www.sacred-texts.com/chr/balt./balt.htm>. Retrieved 2016-1-12 or <http://en.wikipedia.org/wiki/meaning-of-life>. Retrieved 2016-1-12.

<sup>36</sup> Common knowledge.

<sup>37</sup> Genesis 1:1-2. *The New Jerusalem Bible, op.cit.*

<sup>38</sup> E Raymond, et al, eds. *The Jerome’s Biblical Commentary* Vols. I & III (London: Geoffery Chapman, 1969) p. 10.

<sup>39</sup> Genesis 1:11-13; 20 -27. *The New Jerusalem Bible, loc.cit.*

<sup>40</sup> Genesis 1:20-27. *Ibid.*

<sup>41</sup> *Concise Oxford Dictionary* 11<sup>th</sup> ed, *op.cit.*, p.495.

<sup>42</sup> *Ibid.*

<sup>43</sup> RNA in biochemistry means ribonucleic acid, a substance in living cell involved in the synthesis of proteins encoded by genes and in some viruses carrying genetic information instead of deoxyribonucleic acid (DNA)- a substance present in nearly all living organism as the carrier of genetic information. see *Concise Oxford Dictionary* 11<sup>th</sup> ed., *loc.cit.*, pp. 420 and 1242. In the mid-19<sup>th</sup> century two important scientific advances set the stage for modern discussions on the origin of life. In one advance, Louis Pasteur discredited the concept of spontaneous generation. For him even bacteria and other microorganisms arise from parents resembling themselves and so how the first generation of each specie came into existence remains a question to be answered. In the second advance, the theory of natural selection set forth by Charles Darwin and Alfred Russell Wallace suggests that some of the differences between individuals in a population are heritable. See also L E Orgel: *The Origin of Life*, <http://courses.washington.edu/bio1354>, p. 1. Retrieved 20/11/2011.

the specie to which modern man belongs according to the fathers of modern biology.<sup>44</sup> Charles Darwin and Alfred Russell Wallace are inclined to the theory of natural selection suggesting that some of the differences between individuals in a population are inheritable.<sup>45</sup> The issue of the *homo sapiens* is another complex issue. Yet till date, seeking the origin of life outside divine intervention remains a paradox. Hence, Joyce<sup>46</sup> says, “to account for life we are compelled to admit that at some definite point in past time it was placed upon the planet by the operation of an extramundane cause living, intelligent, and personal. But this can (sic) only have been God.” To this extent, there is no need contesting further the origin of life.

#### 4. Life in the Indigenous Igbo Culture

The colony known as Nigeria with over two hundred ethnic groups observing their traditions and cultures was an artificial creation of Lord Lugard in January 1914, as a result of the amalgamation of the Southern and Northern Protectorates of Nigeria by the British colonial government. These ethnic groups have similarities in their cultures. One of these valued similarities is “respect for life.” In the original Igbo tradition, for example,<sup>47</sup> spilling of blood is an abomination. There is the strong belief that such acts offend the gods, and bring calamity to the land. Even in those days when twins were erroneously conceived to be evil, people never used their hands to kill them; they were rather sent to the evil forest with little or no food to die on their own. And in cases of murder then, those who killed persons intentionally (*ochu*) were ostracised and sent on exile of no return with seven sounds of the cannon. But if the murder was unintentional (*ochu oghum*), the murderer was sent on exile still with the same number of cannons, but with hope of return, probably after seven years within which time to appease the gods for purification. (i.e *ikpu ochu*). Our fore fathers had such respect for life then. And for them, man is the apex of creation (*Mmaduka*), life is the highest good (*Nduka*), life belongs to God, (*chinwendu*), life is supreme (*Ndubisi*), life is greater than wealth (*Ndukaku*), and therefore sacred (*Ndu di aso*).<sup>48</sup> In local assemblies therefore, when offering kola nut in prayer to the ancestors, elders usually start with these words:

*Ndi nnanna anyi ha anyi n’ ekele unu* (we greet you our fore-fathers)  
*Nna anyi ha tanu oji* (our ancestors chew kola)  
*Ihe anyi n’ayo bu ndu* (what we ask for is life)  
*Ndu Nwoke, Ndu Nwanyi* (Life for man, life for woman)  
*Ndu Umu anyi ...* (life for our children) etc.

This life they request from the ancestor is so much nurtured, preserved and protected, and only eliminated as a result of violation of the norms and burial of their great kings as a sign of respect in those olden days. Normally, offender fall victim to this. These offenders are only eliminated when found guilty after the erstwhile trial by ordeal, and that is to appease the offended gods. Similar cultural

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<sup>44</sup> *Encyclopedia Britannica online* 23 Dec. 2015. <http://www.britannica.com/ebchuecked /topic/1350865/homo-sapiens>. Retrieved-20/11/2015.

<sup>45</sup> As the environment changes, individuals bearing traits produce their kinds that provide the best adaptation to the new environment. In other words, environmental pressures select adaptive traits for perpetuation. Darwin discussing the origin of species posits that “the Creator originally breathed life into a few forms or into one.” Then evolution took over, from so simple a beginning, endless forms most beautiful and most wonderful evolved. In a private correspondence, however he suggests that life could have arisen through chemistry in some warm little pond with all sorts of ammonia and phosphoric salts, light, heat, electricity, etc, present. Yet, in another text while discussing the primitive atmosphere, Darwin says: *It is mere rubbish thinking at present of the origin of life; one might as well think of the origin of matter.*

<sup>46</sup> G H Joyce, *Principles of Natural Theology* (London, 1923) PP. 145 – 152, cited in P. Edwards, *Encyclopedia of Philosophy op. cit.*, p. 478.

<sup>47</sup> L M Okafor, *History for Senior Secondary Schools Bks. 1 & 2* (Onitsha: Jet Publishers Nig Ltd., 1989) pp. 8, 190.

<sup>48</sup> S Iweadighi, *Towards an Igbo Anthropology*. Cited in <http://www.iweadighi.com/towards>. Retrieved 12/11/2010. See also E Kuukure, *The Destiny of Man: Degaare, Beliefs in Dialogue with Christian Eschatology* (Frankfurt Peter Lang, 1985) p. 67.

attitude is found among the other ethnic groups. This was the situation until the modern age of civilization and codified legal system.

### 5. Life as a Fundamental Human Value

Something is fundamental when it serves as a foundation or core of other thing(s), that is, it is of central importance. According to the existentialist, existence precedes essence and the essence of one's life arises only after one had come into existence. Thus, one is only what one is because one is alive to become that which one is, and will cease to be that which he is when one ceases to exist, that is, when one ceases to have life on earth.<sup>49</sup>

Arguably, life is the most precious gift on earth, very dear even to God himself,<sup>50</sup> hence the divine injunction "thou shall not kill."<sup>51</sup> Thus, any killing of human being not sanctioned by God attracts severe punishment, and whenever Yahweh commands the killing of a person or a group, any disobedience to do so attracts another grave sanction.<sup>52</sup> The right to life is one right that is not compromised anywhere in the world, that is why several laws have been made towards its protection. In Nigeria, the right to life is a constitutionally protected right.<sup>53</sup> Globally too, several laws have been made for the same purpose especially by the United Nations General Assembly.<sup>54</sup> In other civilised countries like America, Britain, Germany, France, etc, the right to life is importantly appreciated and legally protected too.

### 6. The Concept of Human Rights

A right is something that is due to a person by just claim, legal guarantee, or moral principle. It is a legally enforceable claim that another will do or will not do a given act; a recognised and protected interest, the violation of which is a wrong.<sup>63</sup> Rights therefore accord one certain power. Interestingly, nature endows a person with some rights that are universal and inalienable, not contingent upon local laws, customs or beliefs of a particular society. These are the rights to life, liberty and property. However, the society adopts them together with other rights as part of the civil and statutory right which are collectively known as legal rights. These legal rights conveyed by a particular polity, usually written, are unlike natural rights, contingent upon local laws, customs or beliefs which may change from time to time according to changing circumstances. Both the natural and legal rights have constitutional protection of which any violation attracts certain sanctions. To this extent, every claim of right by one party warrants the existence of liability on the other party. Hence, rights are correlative to duty, and where there is no duty there can be no right, but the converse is not necessarily true. There may be duties without rights; and in order for a duty to create a right, it must be a duty to act or forbear.<sup>64</sup>

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<sup>49</sup> A L Hall, *Kierkegaard and the Treachery of Love* (Cambridge University Press, 2002) cited in <http://en.wikipedia.org/wiki/meaning-of-life>. Retrieved 17/10/2015.

<sup>50</sup> Genesis 4:1 – 16. The New Jerusalem Bible, *op.cit.*, when Cain killed his brother Abel after Cain's offering was rejected, Yahweh cursed Cain as a result. But upon Cain's complaint that his punishment was much, that whoever comes across him will kill him, Yahweh replied "Very well then, whoever kills Cain, will suffer a sevenfold vengeance. So Yahweh put a mark on Cain, so that no one coming across him would kill him.

<sup>51</sup> Exodus 21: 12 – 17. See also Deutronomy 5:17. The New Jerusalem Bible, *loc.cit.*

<sup>52</sup> 1 King 21: 1 – 28, *ibid.*, (the killing of Naboth by Ahab and Jezebel and Gods sentence pronounced against them. 2 Sam. 11:1- 27, 12: 1- 3 *ibid.*, (the killing of Uriah and the punishment pronounced against David. See also 1 Samuel 15: 1- 34 (The Holy War against the Amalekites as ordered by God and Saul's disobedience and the consequent rejection of Saul as the king of Israel).

<sup>53</sup> The Constitution of the Federal Republic of Nigeria 1999 as amended S. 33 (1).

<sup>54</sup> Universal Declaration of Human Rights (UDHR) 1948, Art. 3.

<sup>63</sup> B. A. Garner (ed.), *Black's Law Dictionary*, 7<sup>th</sup> ed. (USA: West Group Publishers, 1999) p. 1322.

<sup>64</sup> *Ibid.*, p. 1322. In *Cole v. P.C.* (1936) 3 All ER, 107 the plaintiff, a non- parishioner of Westminster, had complained that he was wrongfully excluded from a church service at Westminster Abbey. The court held that the plaintiff only had a privilege or liberty to go to the Abbey, but did not have a strict right to do so, therefore, the authorities there were under no duty to admit him. See also *Paddington v Bates* (1960) All ER,660.

Other writers like Adaramola<sup>65</sup> and Bentham have their different notions about right which are not far from the dictionary meaning of right in relation to duty.<sup>66</sup> Let it be said that the rights being discussed here are legal rights which are of course enforceable. In that wise, Hohfeld is of the opinion that what characterises the right-duty relationship is that the right-holder demands that the duty-observer does not indulge in any act prejudicial to his right.<sup>67</sup> And according to Amadi, the legal right is the right recognised and protected by law, which the power holder is obliged to recognise and respect. By this recognition, the state is required to enforce it or grant remedies, like damages for any failure of the power-holder to respect such right.<sup>68</sup> The enforceability of this right through legal process is the essence of a legal right. However, of all the legal rights, the right to life is pivotal.

## 7. Legal Protection of Fundamental Rights

Legal protection of fundamental rights by the international community has been a unifying ideal around which peoples of the world coalesce. Every criminal justice issue in the polity is a question in human right in relation to how it affects the human rights of the people concerned. Though much codification came after the world wars, but the concept of human rights is as old as civilisation and probably one of the oldest and most influential sources of this vision is to be found in the biblical account of creation.<sup>55</sup> Also notable among the human right documents are the Edicts of Ashoka,<sup>56</sup> the Constitution of Medina,<sup>57</sup> Hammurabi Code,<sup>58</sup> the English Magna Carter i.e. “the Great Charter”<sup>59</sup> of 1215, and the 1789 French Declaration of the Rights of Men and Citizens. They created precedence for a legal system, protecting the people from arbitrary prosecution and punishment. The protection of human rights grew stronger after the tragic experience of the World War II during which times millions of Jews were exterminated by Nazi-Germany. Then tribunals were set up to prosecute perpetrators of human right violation.<sup>60</sup> The UN in 1948 adopted the Universal Declaration of Human Rights (UDHR) for the protection of human rights, and drafted two covenants to establish mechanism for enforcement of the Declaration.<sup>61</sup> The UN declaration set a landmark legal precedence for others to follow. Prior to this time, such violations like what happened in Cambodia then, were met only by verbal expressions of concern. Today, in another international stride, the International Criminal Court (ICC) is solidly on ground, cutting across the shield of sovereignty to address human right issues.<sup>62</sup> Thus, even after sixteen

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<sup>65</sup>Adaramola, *Basic Jurisprudence* (Lagos: Nayee Publishing Co. Ltd., 2003) p. 162. That a right is an advantage conferred on a person or group of persons by a rule of law, whereby the person or group can bring an action or claim against any other person or group upon whom either generally or specifically some duty in respect of that right has been laid by that or any other rule of law.

<sup>66</sup>A G Wenham, Benedict de Spinoza: *The political works* (London: Oxford University Press, 1958), T.H. Green, Lectures on the principles of political obligation 1882 quoted in the Encyclopedia of Philosophy, Vol. 7, J Austin: Lectures on Jurisprudence, all cited in G O S Amadi: *Police Powers and the Rights of Citizens in the Nigeria Criminal Justice System* (Unpublished, Ph.D. Thesis, Faculty of Law, University of Nigeria, 1993) p. 26.

<sup>67</sup> M.D.A. Freeman, *Lloyd's introduction to Jurisprudence* 7<sup>th</sup> ed. (London: Sweet & Maxwell Ltd., 2001) p. 35.

<sup>68</sup> G O S Amadi, *loc.cit.*, p. 30.

<sup>55</sup> Gen 1: 27. The New Jerusalem Bible, *op.cit.*

<sup>56</sup> Faishal, *Historical Development –of-Human-Right* <http://jurisonline.in> 2010/05. Retrieved 18/10/2010.

The Edict was issued by Ashoka the Great of India between 272 – 231 BC.

<sup>57</sup> It was drafted by Mohammed in 622 AD to mark a formal agreement between all of the significant tribes and families of yathrib later known as medina.

<sup>58</sup>The code is about 4000 years and it had about 282 Laws.

<sup>59</sup> Clause 39 of the Charter.

<sup>60</sup>The Nuremberg and Tokyo Tribunals were set up. Later, the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR) See K Kittichaisaree, *International Criminal Law* ( New York: Oxford University Press, 2001) pp.17-22. And of recent the Special Court for Sierra Leone, that is trying Charles Taylor.

<sup>61</sup>The International Covenant on Civil and Political Rights (ICCPR), and its optional protocol, and the International Covenant on Economic Social and Cultural Rights (ICESCR).

<sup>62</sup> For the first time, a sitting president like Omar Al Bashir of Sudan could be indicted and an ex-president like Charles Taylor of Liberia could be prosecuted for human right violation. Although, in effect it has not been easy to bring people like Al Bashir to justice, but the impact of the warrant is already on him until the law takes its course. See also S N Anya, *The Evolution and Application of Sanction in International Criminal Law* unpublished, LL.M Dissertation; Faculty of Law, University of Nigeria Enugu Campus, 2011. p. 33.

years in hiding, people like Ratko Mladic, former Serb General could still face trial for war crimes and genocide committed during the 1992-96 bloody Bosnia massacres of about 8,000 Muslim men. It is submitted that this will create room for a better appreciation of the concept of rights, the right to life as the pivot of other rights and the different legal provision protecting this right to life which are discussed immediately below.

### **8. Right to Life as the Pivot of other Human Rights**

The right to life is the basic and the fundamental of other rights. Without it, protection of all other human rights becomes either meaningless or ineffective.<sup>69</sup> Its protection therefore is an essential pre-requisite to the full enjoyment of all other human rights including but not limited to the entire range of economic, social, cultural, as well as civil and political rights. In the American case of *Union Pacific Co v. Botsford*,<sup>70</sup> the Supreme Court held “No right is held more sacred, or more carefully guarded by the common law, than the right of every individual to the possession and control of his own body ... and his own life.”

The sacredness attached to life accords it pre-eminence in every instrument entrenching the human rights in most, if not all countries of the world. However, the right to life is not as inviolable as it seems at first sight. There are situations where states may deprive an individual of his life, to which international human rights law does not raise any objection, especially if it is for national security, defence, public safety, and for protecting the rights and freedom of other persons. Oputa J. (as he then was) once said, among other things that:<sup>71</sup>

...very early in life, man becomes aware that he is living in a world of laws, and that obedience to these laws is essential for the harmonious existence of the society as a whole or for the preservation of the individual. He can act as though the laws do not exist since he has free will, but he soon discovers that obedience to the laws of his society offers him the greatest chance not only of happiness but also even of survival.

However, although the right to life is not absolute, any derogation by government must be in accordance with the rule of law.

### **9. Legal Instruments Safeguarding the Right to Life in Nigeria and the Globe**

The importance of law is such that it is difficult or impossible for a society to exist without law. Freedman says it all:<sup>72</sup>

Fiction provides us with numerous examples of utopian societies where congruence of norms and ideal is such that there is perfect social harmony and no need for law or lawyers to emerge. But history teaches us the unhappy truth that no such society has ever existed. In all societies, socialisation is an unequal process, there is always deviance and conflict, and Law can be seen to emerge as a norm asserting authority with the coercive power to sanction those guilty of violating the norm. It is difficult to escape the fact that law is necessary.

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<sup>69</sup> B G Ramcharan, *The Right to life in International Law*, Volume 3; Part 1, Re-thinking the Definition and Concept of the Right to Life under International Human Rights Law. <http://books.google.com-ng/books?> Retrieved 28/10/2010. Also at the International conference on Human Rights, held in Mexico in March 1983, it was confirmed that the right to life is a fundamental right of all men and women of the world.

<sup>70</sup> 141 US 250 (1891) at 250-251 cited in Nwazuoke *et al*: *Legal Implications of Extra-Judicial Killings in Nigeria* Presented at the National Conference on Extra-judicial killings in Nigeria: The Way Out. Faculty of Law Auditorium Ebonyi State University, Abakaliki, December, 2005. P. 20.

<sup>71</sup> Oputa, JSC (as he then was), *The Independence of the Judiciary in a Democratic Society: Its Needs, its Positive and Negative Aspects*. Cited in Olumese - Lecture note on Jurisprudence 2004, University of Benin, Faculty of Law.

<sup>72</sup> Freedman, *The Legal Structure* (1974) p. 1 cited in Olumese, Lecture note on Jurisprudence, Faculty of Law, University of Benin, 2004.

In this wise, efforts have been made both nationally and internationally to provide legal instruments for the protection of the right to life.

### 9.1. Nigerian Constitutional Safeguard for the Right to Life

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is premised on the principles of Freedom, Equality and Justice. Although the provisions of Chapter II of this Constitution deal with issues of fundamental objectives and directive principles of state policy<sup>73</sup> and therefore non-justiciable,<sup>74</sup> they can be justiciable if the provisions of its sections affect any of the rights under chapter four as a fundamental right. In Section 14 (2) (b) it is provided that the “security and welfare of the people shall be the primary purpose of government.” Section 17(2) (b) in furtherance of the social order, recognises the sanctity and dignity of the human person. Again, section 17(3) (c) guarantees the health, safety and welfare of all persons in employment. In addition to the provisions in sections 14 and 17, the Constitution devoted a whole chapter to Fundamental Human Rights, and in that chapter, the right to life ranks first. Section 33 provides specifically for the right to life thus:

- (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 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, or 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.

It is submitted that section 33 (2) (b) of the Constitution is an unnecessary provision because the phrase “to such extent and in such circumstances as are permitted by law or such force as is reasonably necessary” in section 33 (2) means clothing the police or whoever is effecting the arrest or preventing escape from lawful custody with legality garb. The issue of “circumstances as are permitted by law and such force as is reasonably necessary” are matters for the court to determine. It is not for the police or any other arrester to determine with gun or its equivalent. It is submitted that, section 33 (2) (b) is a bad constitutional provision because by that provision, it is making the arrester the accuser, the prosecutor, the judge and the executioner on the same spot at the expense of the suspect’s right to fair hearing and invariably his right to life.

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<sup>73</sup> Fundamental objectives are ideals towards which the Nation is expected to strive whilst Directive Principles lay down the policies which are expected to be pursued in the efforts of the Nation to realise the national ideals.

<sup>74</sup> It means that nobody can challenge the Federal or State government in a court of law on such issue falling within that chapter of the constitution for enforcement. See *Badejo v. Federal Minister of Education*, (1996) 8 NWLR, (Pt. 464) 15, where the applicant, a primary six pupils from Ogun State brought an application seeking leave of the Court to apply for an order to enforce and secure her fundamental right to freedom from discrimination as contained in section 39 (1) of the 1979 Constitution. She alleged that in spite of having passed the requisite common entrance examination with a score of 293, the respondents refused to call her for the ensuing interview for admission into Junior Secondary School. She alleged that this was on account of the fact that her State's cut-off marks were 302 for boys and 296 for girls while, for some other states, cut-off points were as low as 194 for boys and 151 for girls. The trial court dismissed the application for lack of *locus standi*. This was overturned on appeal though her action ultimately failed on the ground that the discriminatory procedure on quota basis was made pursuant to a Directive Principle of the Constitution, the federal character provision. It is suggested that the Court was more disposed to upholding the regulation because it was made pursuant to a constitutional provision that was albeit enacted to redress in favour of what it perceived to be the socially disadvantaged.

## 9.2. Other Nigerian Domestic Legislative Provisions

### Criminal Code

The Criminal Code from sections 330 to 350 has provisions safeguarding the right to life. It bars offences endangering life or health, such as abandoning or exposing children to danger, setting man-trap, failure to supply necessaries meant to save life, trial by ordeal which is likely to result in death, unlawful homicide, suicide, and infanticide. It forbids attempt and/or conspiracy to commit murder, aiding suicide and killing of unborn child.<sup>77</sup> It is interesting to note that no one even owns his life under the law. Hence, section 327 of the Criminal Code debars everybody from attempting suicide.<sup>78</sup>

### Penal Code

The Penal Code from section 220 to 231 equally makes provisions for the safeguard of the right to life. The Code bars offences affecting life such as culpable homicide by causing death of person other than person whose death was intended, abetment of suicide of child or insane person, abetment of suicide, attempt to commit culpable homicide, and attempt to commit suicide.

## 9.3. Universal Declaration of Human Right 1948

The Universal Declaration of Human right (UDHR), a resolution of the UN General Assembly adopted in 1948, by its Article 3 upholds the right to life, liberty and security of the person.<sup>79</sup> Over sixty seven years ago, the international community with the adoption of the Universal Declaration of Human right on December 10, 1948 recognized that human rights and fundamental freedoms are applicable to every individual in the world. According to Eleanor Roosevelt, “the Declaration stands out as the international Magna Carta for mankind everywhere”. However, she also said that it is not and does not purport to be a statement of legal obligations; it is instead a common standard of achievement for all peoples of all nations, a shared vision of a more equitable and just world<sup>1</sup>. The declaration today affects people's lives and inspires human rights legislation all over the world. In 1966 a mechanism for the implementation of the UDHR were provided by the UN General Assembly. Hence, two instruments of general scope emerged: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Other Conventions relating to specific problems include torture (1984), racial discrimination (1965), discrimination against women (1979), children’s rights (1989), etc. There were also conventions of International Labour Organization (ILO), on the abolition of forced labour, on equal pay for men and women, on a minimum standard of social security, all of which were designed to defend workers’ rights and to promote social justice. These conventions have been adopted and domesticated by most countries of the world but the impact is rather more theoretical than practical.

## 9.4. Council of Europe- Convention for the Protection of Human Right and Fundamental Freedom (1949)

Article 2 of the ECHR protects the right to life and stipulates that deprivation of life by using absolutely necessary force under the following circumstances shall not be regarded as contravening this article: (a) In defense of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection. Article 15 forbids derogation from this principle even in times of emergency except for deaths resulting from lawful acts of war. However, with respect to the provisions of Article 2 (b) of this instrument, we hold the same view as in section 33 (2) (b) of the 1999 Constitution of the Federal Republic of Nigeria as already discussed.

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<sup>77</sup> Ss. 207, 306, 320- 329 A.

<sup>78</sup> Also Chapter 18 of the Penal Code makes similar provisions on offences affecting life.

<sup>79</sup> It provides” Everyone has the right to life, liberty and security of person. <http://www.hrea.org/index.php?base-id=159> . Retrieved 28/2/2016.

<sup>80</sup> Nasira Iqbal; “*The Impact of the Universal Declaration of Human Rights on Regional and Domestic Legal Systems*”: Talk before the American Bar Association on the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights (New York, November 14, 2008).

### **9.5. European Union Human Right Documents**

The ECHR of the Council of Europe and the Charter of Fundamental Rights of the EU are two legal documents of two different supranational organisations of Europe on the protection of fundamental rights. The ECHR is a living instrument. According to Mahoney,<sup>80a</sup> the drafters of the Charter have fashioned their instrument as an element of continuity with the ECHR and not as a break. And Lenaerts and De Smijter, supporting Mahoney's idea speak thus: "We can state that the Charter mainly confirms the role of the ECHR in the EU legal order. Almost all fundamental rights stated in the ECHR are taken up in the Charter. If the text of the Charter departs from that of the ECHR, it can never be at the expense of the level of protection offered by the ECHR. It follows that the Charter cannot be qualified as an alternative for the ECHR. Indeed, this Convention continues to be enforced by the Court of Justice as part of the general principles of Community law".<sup>81a</sup> Against the backdrop that the Charter of Fundamental Rights of the European Union does not override the 1949 Convention it is here cited as a separate legal document.

### **9.6. The Charter of Fundamental Rights of the European Union 2000**

Article 2 defends the right to life and prohibits the use of death penalty. It provides that (1) everyone has the right to life. (2) No one shall be condemned to death penalty, or executed.

### **9.7. American Convention on Human Right 1978**

Article 4 of this instrument specifically provides for the right to life thus: (1) every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one should be arbitrarily deprived of his life. In subsection 2, it restricts situations in which death penalty can be used. Thus for Countries that have not abolished death penalty, death penalty may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime.

### **9.8. The African Charter on Human and People's Rights 1981**

Article 4 of this instrument protecting the right to life provides: 'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

### **9.9. African Charter on the Rights and Welfare of the Child 1990**

Article 5 of this instrument provides for the right of the child to survival and development, including the rights not to be sentenced to death and to be provided with adequate resources to survive.

### **9.10. Convention Relating to the Status of Refugees 1951**

Article 33 of the Refugee convention prohibits forced return of persons facing a threat to their lives in their home country. This provision condemns the recent act of the Italian government against Tunisian refugees during the recent crisis in Tunisia. Then a good number of Tunisian populations attempted to escape to Italy for refuge. The Italian government forced them back and refused them entry, on condition that the Italian infantry will escort them back to Tunisia and provide them with security there. However, the ousted President of Tunisia, Ben Ali, refused the offer emphasising that what was happening in Tunisia then was only an internal affair of Tunisia, of which Italy has no right in international law to interfere in.

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<sup>80a</sup> P Mahoney, "The Charter of Fundamental Rights of the European Union and the European Convention on Human Rights from the Perspective of the European Convention", *Human Rights Law Journal* (HRLJ), 31 December 2002, Vol. 23. No. 8-12, pp. 300-301. Cited in A Bilen, *Eu Charter: Rival or Complementary*, Utrecht University Turkey, Law Faculty, 2005 Ll. m Dissertation, pp. 34-35. See also [http://www.justice.gov.tr/e-journal/pdf/Bilen\\_Thesis.pdf](http://www.justice.gov.tr/e-journal/pdf/Bilen_Thesis.pdf). Retrieved 25/10/2015.

<sup>81a</sup> Lenaerts and De Smijter, loc.cit., pp.296-29 "A 'Bill of Rights' for the European Union", CMLR 38: 273-300, (2001) pp. 276-277, See also [http://www.justice.gov.tr/e-journal/pdf/Bilen\\_Thesis.pdf](http://www.justice.gov.tr/e-journal/pdf/Bilen_Thesis.pdf). Retrieved 25/10/2011.

### **9.11. International Covenant on Civil and Political Right 1966**

This International treaty on civil and political rights (ICCPR) is specific about the right to life and the death penalty. In its Article 6, it provides, *inter alia*, that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Article 4 asserts that states are not to derogate from Article 6 even in times of public emergency.

### **9.12. Rome Statute of the International Criminal Court 1998**

The International Criminal Court (ICC) Statute protects the right to life in danger of facing genocide, war crimes and crimes against humanity. Under Article 6 of the Rome statute, killing of persons either by direct murder or by inflicting conditions which bring about their death e.g. deprivation of food, water and medication come under the jurisdiction of the court if they amount to Genocide. Genocide must be committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group. In summary, Article 7 provides that killing as part of a widespread or systematic attack e.g. murder, extermination, enslavement, forcible transfer of population, etc, directed against any civilian population is crime against humanity. And Article 8 provides that killing during an armed conflict in violation of the international humanitarian law and principles of necessity, humanity and chivalry is war crime constituting grave breach of the Geneva convention of 12 August, 1949. Worthy of note is that death penalty is categorically excluded from punishments the ICC is permitted to impose despite the fact that it has jurisdiction over very serious crimes.

## **10. Effectiveness of the UDHR in Safeguarding the Right to Life in Nigeria and the Globe**

The fact remains that each state chooses to what extent and how they are bound by any law whether international, regional or domestic. For example, when the United States of America ratified the Convention on the Prevention and Punishment of Crime of Genocide, they did so making two “reservations,” five “understandings” and one “declaration.”<sup>81</sup> Similarly, the Kingdom of Saudi Arabia stated that it would not concur with the Convention on the Elimination of all Forms of Discriminations Against Women should it be in conflict with Islamic law which in practice makes it null and void<sup>82</sup>. The Organization for Islamic Conference (OIC comprising states with Muslim majority population) has drawn up a parallel declaration of Islamic Human Rights in 1990 called The Cairo Declaration. The vast majority of the Member States of the OIC are signatories to the UDHR. By adopting the 1990 Cairo Declaration, these States have expressed their reservations to those provisions of these treaties which they perceive as violating human rights in Islam. This is considered by some European and American States as an attempt to limit the rights enshrined in the UDHR and the International Covenants.

Thus by legal instrument, means or mechanism, a state may still avoid bearing full responsibility of the law it ratifies. There is a dichotomy of law and practice at both regional and domestic levels. In association with the submissions of Nasira, the biggest disappointment with these impressive legislative structures is that their implementation has not risen to anyone’s satisfaction. Today, the same attitude of states is affecting the right to life of persons everywhere in the world today. A state can promote the right to life of her citizens as well as dig the grave for the unceremonious burial of this right. It is submitted that responsibility for the effective guarantee of the right to life as state in the Universal Declaration for Human Right lies first with the individual State. It is most unfortunate that in every little political and social unrest anywhere in the world, the right to life of innocent citizens is sacrificed as a price to monumentise ambitious leaders on the throne; yet the blood of these citizens is as red as those of their political leaders and often more reddish. How can we justify that “the UDHR stands out as the “international Magna Carta” for mankind everywhere in the face of the atrocities in Sudan, Tunisia, Syria and the cold wars against the right to life by terrorist in Nigeria and other such countries or to affirm that it is a common standard of achievement for all peoples of all nations, a shared vision of a more equitable and just world.

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<sup>81</sup> V Scott, Shirley: “*International Law in World Politics*. (London: Lynne Rienner Publisher, 2004) p.219. In D.Jarczewska; Do Human Rights Challenge State Sovereignty. E-IR 2013.

<sup>82</sup> R K M Smith, ‘Human Rights in Internal Law’ In M Goodhart (eds), *Human Rights, Politics and Practice* (Oxford: Oxford University Press, 2009) pp 28-37.

### **11. Conclusion and Recommendations**

No doubt, there could be possible tension in the protection of rights especially the right to life. Yet, the fact remains that the right to life is a global concern, a unique treasure for the man and a right that must be protected. Every life is important as there can never be a nation without life. It is therefore recommended that Article 3 of the Universal Declaration of Human Right be reviewed and redrafted to impose a more binding responsibility on every sovereign state and their leaders. It is also suggested that the loss of any life in any political unrest in a country should be the individual responsibility of the sovereign head that should be called to account for that life before the international community. There should also be sanctions particularly placed on any head of a sovereign state should transition to a new government under his leadership lead to loss of lives of citizens. Finally, there must be a change in the climate of ideas and action by some state leaders that their life is more important than those of their citizens.