



THE RIGHT TO LIFE: A COMPARATIVE STUDY OF THE FEDERAL REPUBLIC OF NIGERIA, THE REPUBLIC OF KENYA AND THE REPUBLIC OF GHANA

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Abstract:

The sanctity of human life is a non-negotiable affair either globally, regionally or nationally. This settled stance explains why the right to life is recognized, documented and safeguarded all around the world through various international instruments and constitutional documents. Intrinsically, the right has been globally circumscribed to be the mother of all rights without which the true actualization of other human rights would be meaningless, if not illusory. This right to life amply and focusedly is expatiated in this paper, more particularly within the context of Africa, using both doctrinal and comparative research methods; paying special comparative attention to the three jurisdictions of the Federal Republic of Nigeria, Republic of Ghana and the Republic of Kenya. Holistically, the author in essence finds that while this right is truly indissoluble and inalienable, it is still subject to certain specific limitations and qualifications that tend to legally show that the right is never absolute but qualified. Fundamentally, the paper further appraises the antithetical concepts of abortion, euthanasia and suicide vis-à-vis the inviolability of human life. It analogically finds these concepts to be outlawed and criminalized in the three jurisdictions of focus, subject to reasonable purposeful exceptions in the case of abortion. It practically recommends useful reforms tailored towards the maximum observance, safeguard and realization of this fundamental freedom.

Keywords: Human Right, Right to Life, Death Penalty, Abortion, Suicide, Euthanasia

Introduction

Assuring the right to life is undoubtedly a fundamental point in the concept of the protection of all other human rights. Physical survival is a prerequisite for benefiting from various rights and liberties belonging to all members of human family; and this subtlety explains why sanctity of human life is a non-negotiable affair. It is logically the guarantor of all human rights. It is extrinsically described as the mother of all rights upon which all other human rights are practically rested. It suffices to say that it is the right of all rights in the failure of which the realization of all other human right become meaningless, if not impossible. Without mincing words, each sovereign state has a duty generally, individually and collectively to take appropriate steps to protect the right to life of those within its jurisdiction, and to investigate arbitrary and unlawful killings and punish offenders. This means that governments are required to enact laws that criminalise unlawful

killings and the laws must be supported by law enforcement machineries for the prevention, investigation and punishment of their breach¹.

Thus, right to life entails that countries and agents of countries must not deprive another person of life arbitrarily or unlawfully. A killing may be arbitrary even if it is not unlawful under the law of the country where it had occurred. For instance, a killing by a law enforcement official may be permissible under domestic law, but it may nevertheless be arbitrary if it is carried out without legally justifiable reasons or in disproportionate circumstances such as killing without giving the deceased an opportunity to surrender or where it is not necessary to effect an arrest or prevent the lawless escape of criminals or guard free persons from unlawful riot or violence².

In that connection, this right is broadly and eminently provided for under major global human right instruments such as Universal Declaration of Human Rights of 1948, International Covenant on Civil and Political Rights of 1966, among others. Further recognized, enshrined and protected under various regional instruments which include African Charter on Human and People's Right of 1981, American Convention on Human Right of 1959 and European Convention on Human Rights of 1950, to mention but a few, this right is similarly enshrined under the domestic constitutions of distinct sovereign states subjects to certain qualifications and limitations that practically tend to show that the right may not be legally absolute.

In synopsis, this paper shall examine the concept of right to life, thereby looking into its meaning and content, and the qualification and limitation thereof. It shall further consider human right to life vis-à-vis the imposition of capital punishments under the domestic laws of certain states as well as explore the position of the laws in the light of the connected acts of abortion, euthanasia and suicide, making comparative analyses among the three jurisdictions of the Federal Republic of Nigeria, Republic of Kenya and the Republic of Ghana while at the same time drawing relevant inferences from major global and regional instruments on human rights as a significant contribution to the voices against unlawful violation of the sacredness of human life worldwide.

The Concept of Right to Life

The right to life belongs to the category of human rights that are inalienable, imprescriptible and inherent to all human beings, by virtue of which all human beings enjoy all other rights prescribed and guaranteed by international law and constitutional documents. This right has been in existence from time immemorial as clearly shown in holy scriptures³. Moreover, because the right is directly concerned with preventing arbitrary deprivation of human life, it can be legally relevant in situations such as the use of force by public authorities, the imposition of capital punishments and the investigation of conducts of private persons and public entities when a person dies by reason of their acts or under their care. Thus, this right generally imposes both positive and negative duties

¹<https://www.ag.gov.au/rights-and-protections/human-right-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-life>> accessed July 18, 2023.

²<https://doestore.ohchr.org/selfservices/fileshandler.ashx?zenc=6QKGld%2fpfprocaghhb7yhsrdBOHI/5979ovGGB%2BLMVrGmTolon6kBGgqmxPNIJrLLdefini@jjn19Bgor%2FSq3rkwbcggoj4rgdoh%2fxgwn>> Accessed July 18, 2023.

³ For instances, the glorious Qur'an states in chapter 6 verse 151 thus; and do not kill a soul which Allah has forbidden (to be killed) except by (legal) right. > Accessed, July 18, 2013.

on public entities which entails that public entities need to refrain from taking someone's life (a negative duty) but to act to protect people from real and immediate risk to life (a positive duty)⁴.

The meaning and content of right to life

The right to life asserts the sanctity of human life. The African Charter on Human and Peoples' Rights under Article 4 puts it powerfully as follows:⁵

"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".⁶

The above translates to mean or denote that a human being has the right to live and, in particular, should not be killed by another entity.

In Nigeria, the equivalent provision of the foregoing is section 33 of the 1999 constitution of the Federal Republic of Nigeria (as amended) which provides;

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

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such 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"⁷

It is crystal clear from the ordinary provision of the foregoing section that right to life in Nigeria is inalienable and non-negotiable. However, this section could not be said to have been contravened if life is deprived to prevent persons from unlawful violence, or defend property or effect lawful arrests or prevent the escape of a person lawfully detained or suppress riot, insurrection or mutiny. And all these informed the decision of the supreme court of Nigeria in *Kalu V. State*⁸ where it was held, and rightly too, that right to life in Nigerian law is not absolute but qualified. Likewise, in *Aliu Bello and Ors V. A. G. of Oyo state*⁹, where the deceased was executed by the state while his appeal against conviction for armed robbery was still pending before the Court of Appeal, the Supreme Court broadly upheld the firm decision of the court of Appeal in an

⁴ <https://www.ag.gov.au/right-and-protections/human-right-and-antidiscrimination/human-rights-scrutiny/public-sector-guidance-sheets/rightlife> > accessed July 18, 2023.

⁵ See generally article 4 of the African charter on Human and people's right (1981).

⁶ Ibid.

⁷ Section 333 of the constitution of the federal republic of Nigeria 1999 (as amended)

⁸ (1998) LPELR – 1655 (SC)

⁹ (1986) JNWL 820

action for damages for infringement on the deceased's right to life brought by his dependents that the premature execution was illegal and an infringement on the deceased's fundamental right to life.

Comparatively speaking, by virtue of Article 26(1) (2) and (3) of the Kenyan constitution, every person has the right to life and this right practically begins at conception. It does not go without saying that a person shall not be deprived of life intentionally except to the extent authorized either by the constitution or other written laws.¹⁰

Meanwhile, Article 13 of the Ghanaian constitution which is much more in *pari materia* with the Nigerian constitution than the Kenyan constitution also guarantees the right to life of the people of Ghana while recognizing killing in execution of court sentence or for the defence of persons or property from violence; for effecting lawful arrest or prevent the escape of lawfully detained persons, for the suppression of riot, insurrection or mutiny or in order to prevent the commission of a crime as not amounting to the deprivation of right to life.¹¹ However, despite this Ghanaian constitutional provision, in *Dexter Johnson V. The Republic of Ghana*,¹² the United Nations Human Right committee vividly held that Ghana's mandatory death penalty for murder is a violation of the right to life. This decision shall be peculiarly examined in the later part of this work.

To draw home the points, while the Kenyan constitution explicitly declares that this human right to life begins to exist at conception,¹³ the other two jurisdictions of Nigeria and Ghana leave unanswered the crucial question as to when right to life begins. Nonetheless, section 307 of the Nigerian Criminal code subtly states that a child becomes a person capable of being killed if he had proceeded alive from the womb of the mother whether he had breathed or not, or whether he has an independent circulation or not and whether the navel string has been severed or not¹⁴.

Above all, in the three jurisdictions it is solidly obvious that human right to life is not absolute but limited.

An Ample Elucidation of Right to Life under the Universal Declaration of Human rights, International Covenant on Civil and Political Rights, African Charter on Human and Peoples' Right, European Convention on Human Right and American Convention on Human Rights

The Universal Declaration of Human Rights of 1948 is a milestone document in the history of human rights worldwide. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was essentially proclaimed by the United Nation's General Assembly in December 1948 as a common standard of achievements for all people and all nations, (i.e. General Assembly resolution 217 A)¹⁵.

¹⁰ See section 26(1) of the constitution of Kenya.

¹¹ See generally Article 13 of the Ghanaian constitution.

¹² (2019) 3 AFCLR 99.

¹³ See Articles 26 (2) of the Kenyan constitution.

¹⁴ The Nigerian Criminal code, section 307 thereof.

¹⁵ <https://www.ohchr.org/en/universal-declaration-of-human-right#:~:text=the%20Human%20Rights%20is%20a%20milestone,right%20to%20be%20universally%20protected> > Accessed July, 19 2023.

The Declaration categorically states in Article 3 that “Everyone has the right to life, liberty and security of person.”¹⁶ This singular provision serves as the universal legal foundation for the express protection of the right to life of all humanity all over the world.

In the same spirit, the International Covenant on Civil and Political Right (ICCPR), adopted by the UN General Assembly in December 1966, contains important guarantees for the protection of civil and political rights across the world. Accordingly, without mincing words, it is aptly provided by Article 6 of the covenant that every human being has the inherent right to life which shall be protected by law, and no one shall be deprived arbitrarily of this right. The covenant further recognises capital punishments only for the most serious crimes subject to the right of the convict to seek pardon and bearing in mind that the punishment shall not be imposed on pregnant women and persons below 18 years of age in countries that have not abolish same.¹⁷

Likewise, the inviolability of Human beings is aptly provided for by the African Charter on Human and Peoples’ Right of 1981, vigorously guaranteeing same under Article 4 as earlier cited. Hence, no one shall be deprived arbitrarily of his life under this charter. Accordingly, in the case of *Zimbabwe Human Rights NGO forum V. Zimbabwe*¹⁸, the African Commission found Zimbabwe Army officers to have arbitrarily taken the life of one Lamack Chemvura in violation of Article 4 of the African charter, and it ordered damages to be paid to the family of the deceased who was wrongfully killed by the state.

Moreover, Article 2 of European Convention on Human Right (1960) as well as Article 4 of the American Convention on Human Rights of 1969 similarly protect right to life in Europe and America respectively. While capital punishments are recognised by both of these regional conventions, the American convention is however more detailed by stipulating that such punishments shall not be inflicted on an offender who is below the age of 18 or above the age of 70. Accordingly, in the case of *Roper V. Simmons*,¹⁹ the American Supreme Court gave a landmark decision that it is unconstitutional to impose capital punishment for any crimes committed while under the age of 18.

An Appraisal of the Qualifications and Limitations on Human Right to Life Among the Three Focus Jurisdictions of the Federal Republic of Nigeria, Republic of Kenya and the Republic of Ghana

The general quality of the right to life varies across jurisdictions. However, the invariable legal position among the three jurisdictions of Nigeria, Ghana and Kenya is that this right is subject to qualifications and limitations that intrinsically denote that the right to life is not absolute but qualified. To that end, section 33 of the Nigerian constitution which is in *pari materia* with section 13 of the Ghanaian constitution and section 26 of the Kenyan constitution states that 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 a person has been found guilty. This portrays that for a person to be qualified for a continued enjoyment of this right he must not have been sentenced for a capital

¹⁶ The Universal Declaration of Human Rights of 1948 (article 3 thereof)

¹⁷ See generally Article 6 of the international covenant on civil and political rights, (1966).

¹⁸ April 2012, ACHPR, 295/04, 51st ordinary session.

¹⁹ 542 U.S. 551 (2005).

offence. i.e. death penalty. The basic discourse of death penalty vis-à-vis human right to life shall be expansively explored in the later part of this work.

Without much ardour, worthy of mention is the point that the right to life of a person cannot be said to have been infringed upon in the following crucial circumstances;

- (a) where death is caused by use of reasonable, necessary and permissible force for the defence of any person from unlawful violence or for the defence of property.
- (b) Where death is caused by reasonably necessary application of force for the instant purpose of effecting a lawful arrest or preventing the escape of a person lawfully detained;
- (c) Where death is caused by reasonably necessary force used to suppress a riot, insurrection or mutiny; and
- (d) Where death ensued from reasonably necessary application of force aimed at preventing the commission of a crime²⁰.

These various subheads are discussed vastly and seriatim as can be seen below.

- a) *Where death is caused by use of reasonable, necessary and permissible force for the defence of any person from unlawful violence or for the defence of property:*

This subhead is replicated as contained under section 33 (2) (a) of the Nigerian constitution equivalent to section 13 (2) (a) of the Ghanaian constitution. However, the constitution of Kenya does not replicate the provision but merely and generally states under section 26 (3) that a person shall not be deprived of life intentionally, except to the extent authorized by the constitution or other written law. Notwithstanding the express omission nonetheless, this exception can be impliedly said to have been accommodated under this said subsection 3 of section 26 of the Kenyan constitution as a matter of inference.

In that nexus, defence of self or property as exceptionally provided for by the foregoing provisions is captured by sections 286 – 293 of the criminal code of southern Nigeria, sections 59-67 of the penal code of Northern Nigeria, section 37 and 39 of Ghanaian criminal code and section 17 of Kenyan penal code, and governed by certain elements. These elements consist of the followings:

- i) ***There must be reasonable apprehension of death or grievous harm***²¹ this ingredient or element of self-defence depicts that in the circumstance of the defence, the life or property of the person involved or that of another person is/are in real danger. This indispensable element can be traced to the case of *Ita & Anor V. State*²² where the court pronounced thus:

*A man is justified in using against an assailant a proportionate amount of force in defence of himself or other persons who he is under a duty to defend, where he consider his life or such other persons' lives to be in danger*²³.

²⁰Section 33 (2) of the Nigerian constitution equivalent to Article 13(2) of the Ghanaian constitution.

²¹<https://www.mondaq.com/nigeria/crime/1299858/self-defence-under-nigerian-law#:~:test=ther> % 20 must % 20 be % 20 apprehension, and %20 reasonable 20 in % 20 the % 20 circumstance > Accessed July, 19, 2023.

²²(2025)KECA 167 (KLR)

²³(2013) LPELR – 21392 (CA).

Duly apposite to this sub-head is also the Ghanaian case of *Yeboah V. The state*²⁴

ii) ***It must be necessary to use force at that time***²⁵: This element simply connotes that there must be no other method of averting the harm such as where there is no means of escape. But where the defendant for instance had a reasonable route of escape, the defence fails. Hence as held in the case of *Mohammed V. state*,²⁶ the defendant is not only expected to establish that he was at the time of the killing in reasonable apprehension of death or grievous harm but also that it was necessary at the time to use the force which resulted in the death of the deceased in order to preserve his life.

iii) ***The force used by the defendant must be reasonably proportionate to the force used or imminently threatened against him in the circumstance***²⁷: Thus in *George V. state*,²⁸ the Nigerian court held as follows:

Proportionality can be determined by the nature of weapon used in retaliation, and the obvious disparity in the relative physical strength of the parties.

Accordingly, where the defendant defends a stick attack by using a gun or a machet, the defence cannot be held to be proportionate and is doomed to fail.

Finally, such force used must be necessary, reasonable and commensurate to the force used by the assailant.

- b) *Where reasonably necessary force which led to death is applied to effect a lawful arrest or prevent the escape of a lawfully detained person*²⁹: Killing to effect a lawful arrest or prevent the escape of a criminal suspect is also a limitation to the right to life guaranteed in the constitutions of the three jurisdictions under study. The application of deadly force to prevent the escape of criminals lawfully detained can however not be said to cover situations of extrajudicial killing of criminal suspects in custody in lieu of arraignment and prosecution, as the killing of that sort would amount to the deprivation of right to life and, of course, attract criminal liability against any such erring police officer. To that end, in the case of *Aliu Bello and ors V. Attorney General of Oyo state* (supra), the supreme court did not hesitate to hold that the execution of the appellant while his appeal was still pending before the court of Appeal was tantamount to a deprivation of right to life:
- c) *Where death is caused by reasonably necessary use of force to suppress riot, insurrection or mutiny*.³⁰ - as such, use of force by police officers or other relevant law enforcement agencies is legally vindicated in this very circumstance. However, proof must be given where life is lost that the use of force in the circumstance was proportionate, reasonable and necessary to suppress riot,

²⁴ (1967)DLCA 1550

²⁵[https://www.mondaq.com/nigeria/crime/220888/self-defence-under-nigerian-law#:~:text=there % 20 must % 20 be % 20 apprehension, and % 20 reasonable % 20 in % 20 the % 20 circumstance >](https://www.mondaq.com/nigeria/crime/220888/self-defence-under-nigerian-law#:~:text=there%20must%20be%20apprehension,and%20reasonable%20in%20the%20circumstance%20>) Accessed July 19, 2023.

²⁶(202) LPELR-50919 (CA).

²⁷[https://www.mondaq.com/nigeria/crime/220858/self-defence-under-nigerian-law #:~:text = There % 20 must % 20 be % 20 apprehension, and % 20 reasonable % 20 in % 20 the % 20 circumstance >](https://www.mondaq.com/nigeria/crime/220858/self-defence-under-nigerian-law#:~:text=There%20must%20be%20apprehension,and%20reasonable%20in%20the%20circumstance%20>) Accessed July 20, 2023.

²⁸(1993) LPELR – 1320 (SC).

²⁹Section 33 (2) (b) CFRN (1999) (AS amended)

<https://www.google.com/amp/5/www.modemghana.com/amp/infws/961877/the-death-penalty-in-Ghana.html>> Accessed July 20 2023.

³⁰33 (1) CFRM 1999 (As Amended)

insurrection or mutiny, failing which the killing would amount to a crime punishable by criminal law.

- d. *Where death is caused by reasonably necessary application of force meant to prevent the commission of a crime*³¹: this provisional limitation to right to life is only found under the Ghanaian constitution by virtue of section 13(2) (d) thereof but same is not expressly replicated under the Nigerian and Kenyan constitutions. It is however the tenacious contention of this author that a similar provision under the Nigerian constitution is the section 33 (2) (a) thereof which allows similar use of force for the defence of self or others or properties (i.e. against criminality).

Right to life and capital punishments

Being a form of capital punishment instituted by the constitution which required that certain crimes as dictated by law are punishable with death, death penalty goes against the liberal backdrop of fundamental right to life. It has been one of the major controversial punishments that have generated debated arguments all around the world³². In that regard many countries within and outside Africa had abolished death penalty with absolute regard to the sanctity of human life, however, in today's Nigeria, Ghana and Kenya, the penalty of death remains applicable as qualifying enshrined in the section 33 (1) of the Nigerian constitution, section 13(1) of the Ghana constitution and section 26 (3) of the Kenyan constitution. In that nexus, the offences attracting the sentence of death in the three jurisdictions of discourse include but not limited to murder, treason, armed robbery and genocide, among others.

Without, mincing words, section 33 (1) of the Nigerian constitution exceptionally rules and I quote:

*...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 Nigerian*³³.

In a typical application of this provision, in the Nigerian case of *Olanrewaju Oni V. state*³⁴, the appellant administered acid chemical on his daughter which resulted in severe burns of the mouth and the lungs which eventually led to the girl's death. The court found him guilty and sentenced him to death.

The same decision was reached in the Ghanaian case of *Joseph Kwasi Quarshie V. the Republic*³⁵ where the appellant was also handed a death sentence upon conviction for murder.

Although Kenya has not carried out death penalty since 1987, the punishment still remains a part and parcel of today's Kenya despite inconsistent controversies. In that connection, in the case of *Okungu V. Republic*,³⁶ where the petitioner, for example, challenged the constitutionality of Kenyan penal code sections 204, 296 (2) and 297 (2) which prescribe death sentence of the offences of murder, attempted robbery with violence and robbery with violence, the Kenyan court

³¹ Section 13 (2) (d) of the Ghanaian constitution

³² <https://www.google.com/amp/5/www.modern-Ghana-com/amp.infw/96.87.the-death-penalty-in-Ghana.html>

Accessed July 20 2023.

³³ CFRN 1999 (as amended) 5.33 (1)

³⁴ (2020) LCN.4930 (SC)

³⁵ (2018) DLCA4660

³⁶ (2018)JELR 92859 (CA)

of appeal held that the sections are not inconsistent with the constitution and the supreme court of Kenya did not outlaw the death penalty.

Again, in the Nigerian case of *Onuoha Kalu V. the state*³⁷, the Nigerian Supreme Court authoritatively affirmed that the death penalty violated neither the right to life nor human dignity under the Nigerian constitution, thereby affirming the constitutionality of this punishment. This is in total rebuttal of the argument of the appellant that section 319 (1) of the penal code which prescribes death penalty for murder violates the constitutional guarantee of right to life and human dignity under sections 33 and 34 of the constitution respectively.

In connection with the foregoing therefore, it is crystal clear that death penalty for capital offences still constitutes a clog to the absolute exercise and enjoyment of right to life in today's Nigeria, Ghana and Kenya, notwithstanding the practical reluctance of these states in executing death sentence.

Right to life and capital punishment under international law

There is no doubt that international law guarantees right to life as a basic inalienable and foundational right of all humanity. The innumerable authorities of this are abound under Article 3 of the Universal Declaration of Human Rights of 1948, Article 6 of the International Covenant On civil and Political Rights of 1966, Article 2 of the European Convention on Human Right of 1950 and Article 4 of the American convention on Human Right of 1969, to mention but a few as earlier cited.³⁸ However, the pertinent question used is whether this right is subject to the imposition of death sentence by a properly constituted court or tribunal under international law?

In answering this pivotal question, reversion is still to be duly made to the earlier cited international instruments. Hence Article 6(2) of International Covenant on Civil and Political Right amply provides;

*In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present covenant and to the convention on the prevention and punishment of crimes of genocide. The penalty can only be carried out pursuant to a final judgment rendered by a competent court.*³⁹

The above provision particularly is in *pari materia* with the express provisions of Article 4(2) of the American Convention on Human rights (1969) and Article 2(1) of the European convention on Human rights (1950), hence recognizing death penalty imposed by courts of state parties for serious crimes as a general limitation to the human right to life. Additionally, speaking, although no similar provision is found under the African Charter, the same position can be said to be inherent in Africa as evident in the practices of African states signatory thereto.

³⁷ (1998) LLJR - SC

³⁸<https://www.ohchr.org/en/instrument-and-mechanisms/international-human-rights-law> > Accessed, July 21, 2023.

³⁹International covenant on civil and political right (1977) Article 6(2) thereof.

To illustrate better, in the Nigerian case of *Usman Kaza V. state*⁴⁰, the members of a mob who participated in jungle justice killing the deceased were sentenced to death by hanging by the supreme court of Nigeria. The same decision was reached in the Kenya case of *Okunga V. Republic* (supra).

Nonetheless, the 1989 second optional protocol to the International Covenant on Civil and political right under article 1 abolished death sentence. This is *in pari materia* to the provision of the protocol to the American Convention on human Rights to abolish the death penalty adopted in 1990 and protocol no. 6 of the convention for the protection of human rights and fundamental freedoms concerning the abolition of death penalty of 1985. For the avoidance of doubt, Article 1 of the 1989 second optional protocol to the ICCPR aptly provides;

1(1) No one within the jurisdiction of a state party to the present protocol shall be executed.

*(2) Each state party shall take all necessary measures to abolish the death penalty within its jurisdiction.*⁴¹

Notwithstanding the foregoing, death penalty is still in existence among member states, particularly among members of Organization of American states.

Also, death penalty in Africa is gradually waning away in view of criticism by abolitionists making reference to the inviolability of human life. An indication of such criticisms is manifest in the case of *Ally Rajabu V. Tanzania*⁴², where the African court on Human and peoples right held that the imposition of mandatory death penalty as provided for in the penal code of Tanzania constitutes an arbitrary deprivation of the right to life and is contrary to Article 4 of the African charter as it breaches fair trial and takes away the discretion of the trial judge,

The same position was taken by the United Nations Human Right Committee in the case of *Dexter Johnson V. The republic of Ghana*,⁴³ where it was held that Ghana's mandatory death penalty for murder is a violation of the right to life.

Again, recently the Ugandan new Anti-gay legislation which incorporates death penalty for the offence of homosexuality in certain instances has been greeted with condemnation by the international community with key reference to the inviolability of human life.⁴⁴ Therefore, in the international sphere and at domestic level, many abolitionist countries comprising of Australia, Portugal, Sweden, New Zealand, Norway and United Kingdom (de facto) among others had commuted death penalty for life imprisonment, thereby asserting absolute inalienability of the right to life.⁴⁵

⁴⁰ (2008) LLJR -SC

⁴¹ https://www.ohchr.org/en/instruments_mechanism/instruments/second_optional-protocol-international-covenant-civil-and-political-rights > Accessed, July 21, 2023

⁴² (2019) 3AFCLR 539

⁴³ (2011) 2 SCGLR 539

⁴⁴ <https://www.theafricareport.com/311095/ngandas-anti-gay-bill-sigenet-into-law/> > Accessed July 21, 2023.

⁴⁵ <https://deathpenaltyinfo.org/policy-issues/international/countries-that-have-abolished-the-death-penalty-since-1976> > accessed July 21, 2023.

It is the view of this author that human right to life must and should never be made an absolute freedom as this would constitute a threat to societal peace and sanity. Again natural and retributive justice and equity demands that capital punishments must be passed where deserving to fulfill the real fountain of justice to the oppressed and the Supreme Eternity, as justice should not only be done but must well truly be seen to have been done.

The Right to Life and Abortion

Bryan A. Garner⁴⁶ circumscribed abortion as an artificially induced termination of pregnancy for the purpose of destroying an embryo or fetus. It is as such the use of medicine or surgery to terminate a pregnancy or eliminate the fetus so that it does not result to the actual birth of a child. The burning question begging for answer is whether abortion amounts to a deprivation of right to life. In an attempt to answer this fundamental question, it is essentially germane to look into the provisions of these three jurisdictions under study and any other applicable laws there within as to determine the period when life can be said to begin. To that end, under section 26 (2) of the Kenyan constitution, the life of a person is clearly enshrined to begin at conception. No equivalent provision is however found under the Ghanaian and Nigerian constitutions, and this has generated a lot of controversies amongst scholars in the two jurisdictions with a faction contending in conformity with the Kenyan position which maintains that life begins at conception while another canvasses that life begins at birth. The reason behind the view of the latter is that an unborn child is dependent and does not exist independently of the mother, which turns out to mean that he is not a person at law and therefore should not have a right to life.⁴⁷

Nevertheless, to further clarify its stance on the permissibility or otherwise of abortion, the Kenyan constitution expressly provides;

*Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment or the life or health of the mother is in danger, or if permitted by any other written law.*⁴⁸

In Nigeria and Ghana, despite the silence of the operative constitutions on the subject of abortion, abortion is a criminal offence by virtue of sections 228-230 of the Nigerian criminal code and sections 232 and 233 of the Nigerian penal code equivalent to sections 58-59 of the Ghanaian criminal code. To draw home, the point, section 58(1) of the Ghanaian criminal code provides:

58 (1) subject to the provisions of sub-section (2) of this section-

- (a) Any woman who with intent to cause abortion or miscarriage administers to herself or consents to be administered to her any poison, drug or other noxious things or uses any instrument or means whatsoever; or*
- (b) Any person who –*
 - (i) Administers to a woman any poison, drug or other noxious thing or uses any instrument or other thing whatsoever with the intent to cause abortion or miscarriage, whether knowing that the woman is pregnant or has given her consent;*
 - (ii) Induces a woman to cause or consent to causing abortion or miscarriage;*

⁴⁶Bryan A. Garner, Black's law dictionary (10th edition), Minnesota, West Publishing Co., 2014) P. 6.

⁴⁷<https://pubmed.ncbi.nlm.nih.gov/8393918>> Accessed July 2023.

⁴⁸Constitution of the republic of Kenya, section 26 (4) thereof.

- (iii) *Aids and abets a woman to cause abortion or miscarriage;*
- (iv) *Attempts to cause abortion or miscarriage; or*
- (v) *Supplies or procures any poison, drug, instrument or other thing knowing that it is intended to be used or employed to cause abortion or miscarriage;*

*Shall be guilty of an offence and is liable on conviction to imprisonment for a term not exceeding five years*⁴⁹.

In synopsis, the above offence concerning abortion attracts a term of imprisonment not exceeding five years in Ghana. Under section 228 of the Nigerian criminal code (dealing with attempt to procure abortion) equivalent to section 232 of the Nigerian penal code (dealing with causing abortion), 14 years is the maximum term of imprisonment provided. Whereas, in Kenya, since life begins at conception, such offence would be treated as if the offender has caused the death of the child (i.e. deprivation of right to life).

In the Nigerian case of *state V. Njoku*⁵⁰, the court held inter alia that the third defendant caused A to swallow medicine with the intent to procure and which in fact procured her own miscarriage and was therefore guilty of a felony under section 228 of the criminal code. Again, in *R. V. Edga*⁵¹, the West African court of Appeal pronounced obiter that procurement of miscarriage is only lawful if done in good faith for the purpose of preserving the life of the mother. To sum up, the above general exception applies to the three jurisdictions under study while additional exceptions that apply in Ghana comprise of where pregnancy occurred as a result of rape or defilement or where serious physical abnormality or disease would occur upon the birth of the child.

Right to life and Euthanasia in the three jurisdictions of Nigeria, Ghana and Kenya

Euthanasia has been legally described as the act or practice of causing or hastening the death of person who suffers from an incurable or terminal disease or condition, especially a painful one, for reasons of mercy. Euthanasia is sometimes regarded by the law as second degree murder, manslaughter, or criminally negligent homicide⁵². In 2001, the Netherlands became the first country to legalise euthanasia also termed mercy killing⁵³. The relevant question here seeks to know the legal status of euthanasia vis-à-vis the human right to life in Nigeria, Ghana and Kenya.

Before diving into the comparative arena of authoritative response, it is pertinent to note that while the proponents of euthanasia have contested that the practice is an expression of freedom to choose or self-determination inherent in all individuals which promotes bodily integrity and dignity and provides relief in cases of extreme pain, particularly for the terminally ill, while the opponents of it have canvassed that it is an act of cruelty that devalue human life and an attempt by man to play god⁵⁴

⁴⁹Ghanian criminal code 1960 (Act 29), section 58 thereof.

⁵⁰ (1973) EC5 LR638 (Nigeria)

⁵¹ (1938) 4 WACA 133 (Nigeria)

⁵²Bryan A. Garner, Black's Law Dictionary (10th edition), Minnesota; West publishing co., 2014) p.

⁵³ Ibid

⁵⁴<https://www-government.nl/topics/euthanasia/euthanasia-assisted-suicide-and-non-resuscitation-on-request> > Accessed July 22, 2023.

Turning back now to the foregoing fundamental question, it shall be answered saliently and authoritatively by this author that euthanasia constitutes a criminal conduct deserving punishment under the laws and a brutal breach of human fundamental right to life. This is because the constitutions of the three jurisdictions under discourse protectively guaranteed right to life and never incorporated the right to die. In that nexus, section 42 (a) of the Ghanaian criminal code bluntly states that the use of force against a person may be justified on the ground of his consent but the killing of a person cannot be justified on the ground of consent. Similarly, section 308 of the Nigerian criminal code provides holistically that any person who causes the death of another directly or indirectly and by any means whatever, is deemed to have killed that other person.

To draw home, the point, section 242 of the Kenyan penal code equally declares in the following explicit wordings;

Notwithstanding anything contained in section 241, consent by a person to the causing of his own death or his own maim does not affect the criminal responsibility of any person by whom the death or maim is caused⁵⁵.

On the unequivocal punishment for “assisted suicide” or “mercy killing” (i.e. euthanasia), the authoritative provisions of section 326 of the Nigerian criminal code equivalent to section 225 of the Kenyan penal code posits as follows;

Any person who –

- 1) Procures another to kill himself; or*
- 2) Counsel another to kill himself and there by induces him to do so; or*
- 3) Aids another in killing himself; is guilty of a felony, and is liable, to imprisonment for life.⁵⁶*

Under the penal code of northern Nigeria, abatement of persons lacking in legal capacity such as a minor under the age of 18, insane persons, a delirious person, any idiot or any person is made punishable with death, while in other instances, it is made punishable with imprisonment for a term which may extend to ten years in addition to a fine.⁵⁷ As a matter of inference, in the English case of *Airedale NHS Trust V. Bland*⁵⁸, the English court denounced and penalized the removal of life support from a patient in a persistent permanent vegetative state that led to death. In conjunction with the foregoing analyses, it is the position of this author that euthanasia is a criminal conduct which constitutes a deprivation of right to life under the extant constitutions and other distinct legislative enactments of the three operative jurisdictions. It is the independent view of this author that euthanasia should be punished as murder and not just manslaughter regard being had to the sanctity of human life.

Right to Life and Suicide Among the Given Jurisdictions

Suicide is simply the act of willful taking of one’s own life for any reason or motive whatsoever. But does a person have the right to take his or her own life in view of fundamental right to life? In the constitutions of the Federal Republic of Nigeria, Republic of Ghana and the Republic of Kenya,

⁵⁵Kenyan penal code cap.63 (Revised edition, 2012; section 242 thereof.

⁵⁶ Ibid, section 225

⁵⁷Penal code of Northern Nigeria, section 277 thereof.

⁵⁸ (1993)/ ALLER 321

there is an exclusive silence on this point leaving one with no liberal or fundamental option than make legally analogical recourse to other legislative enactments on this head. In that connection, section 327 of the Nigerian criminal code of southern Nigeria equivalent to section 231 of the Northern Nigeria penal code and section 57 (2) of the Ghanaian Criminal Code equivalent to section 226 of Kenyan penal code punish attempt to commit suicide as a misdemeanor.⁵⁹

In that nexus, it suffices to submit that the dependents of a victim of a successful suicide cannot be entitled to compensation from the state for the loss of life of the deceased in these three jurisdictions. In a negative language and, without mincing words, this turns out to mean that a successful suicide does not translate howsoever into a deprivation of right to life. In a synoptic finality, suicide cases are rare cases to try and are difficult for the defendant to win. This means that a person who survives a suicide attempt will be harassed, arrested and punished by the state in accordance with the law of the land which backs the unequivocal stance of this writer that a successful suicide cannot and does not give birth to a case of deprivation of right to life.

Recommendations

Having gone through a holistic exploration of the nitty-gritty of the constitutional bedrock on the fundamental subject of right to life, this author finds it imperative to proffer certain recommendations derivable from the comparative discourse in the context of these three notable jurisdictions of Nigeria, Ghana and Kenya.

- i) The Nigerian and Ghanaian constitutions should be amended as to declare the period when life begins so as to address the existing controversy surrounding the exact time when right to life can be said to have commenced. This has already been accomplished in Kenya by virtue of section 26 (2) of the Kenyan constitution.
- ii) Death penalty should be retained across the three jurisdictions in issue, having regard to its deterrent value, and its basic significance in upholding the principle of equality and natural justice. This retention, despite the ongoing international uproar against same, would continue to instill sanity, sanctity and worth for human life in Africa and in the callous world.
- iii) The state should desist from violent and indiscriminate and undeserving use of force on both free and suspected citizens under the guise of suppressing violence, riot, insurrection or mutiny or of effecting a lawful arrest of freeborn, as all residents, citizens or aliens, are presumed innocent until proved guilty.

Conclusion

The paper examined the human right to life under a comparative synthesis among the three operative jurisdictions of the Federal Republic of Nigeria, the Republic of Ghana and the Republic of Kenya. It looked into the meaning and content alongside the qualifications and limitations of this sacred right and finds death penalties, use of force by the state to suppress riots, unlawful violence etc, or to effect a lawful arrest or to defend self or properties by private citizens as parts of the limitations to the right. It further found brutality, banefulness and fragrant disregard for human life to be the nemeses bedeviling the sacred protection of this inalienable right.

⁵⁹ See, for example, section 231 of penal code of northern Nigeria.

It is the position of this paper that although the human right to life is globally, regionally and nationally recognized and protected, illegal practices such as euthanasia, suicide and sometimes abortion has undermined the value of this right across Nigeria, Ghana and Kenya. It advocated against these anomalies while proffering useful recommendations towards instilling, prioritizing and stabilizing the worth, honour and sanctity of human life across the globe.