
**THE RIGHT TO LIFE UNDER
NIGERIAN CONSTITUTION:
THE LAW, THE COURTS AND REALITY**

S.M.A. Belgore Chair Series

**THE RIGHT TO LIFE UNDER NIGERIAN
CONSTITUTION:
THE LAW, THE COURTS AND REALITY**

By

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Foreword

The *S.M.A Belgore Chair for Law and Development* under the distinguished and able patronage of Hon. Justice S.M.A Belgore *FNIALS, GCON (Former Chief Justice of Nigeria)* is the first Professorial Chair of the institute established in 2009. This Professorial Chair has been active in the promotion of world class research in Law and Development studies, as well as undertaking projects and promoting various Law and Development activities including hosting academic conferences and facilitating international collaboration in the study of law and development. Hon. Justice Belgore endowed this chair as a result of his keen interest in the rule of law, fairness and transparency in the administration of Justice.

In this maiden *S.M.A Belgore Chair* Lecture, the occupier of the Chair Professor Nnamdi Aduba rightly states that the development of human life through law is the ultimate goal of the Chair, thus, the result of this thought provoking Lecture on *the right to life under the Nigerian Constitution, the law, the courts and reality*. This topic cannot be more apt and timely, given the current state of the Nation and the constant threat to the life of its citizens by criminals and other agents of destabilization.

He begins his discourse with the right to life under s.33 of the 1999 Nigerian Constitution and reiterates an age long fact that the right to life should not be limited to basic physical existence but must embody all the bare necessities of life as guaranteed in Chapter II on Fundamental Objectives and Directive Principles of state policy under the Constitution. He further makes a clear comparison with Article 21 of the Indian Constitution, which its Apex Court

through the use of case law, has extended the right to life under the said Article. However, irrespective of judicial activism and dynamism of the Indian Courts, its effects have been minimal and few people have felt the impacts of these landmark decisions.

In the second half of his paper, he sets into a terrain that is only too well apparent in the consciousness of the Nigerian Citizen. He gives a thorough examination with current statistics on the challenges of right to life in Nigeria to include the abysmal infant Mortality rate (IMR), lack of access to safe water and disposal facilities, HIV/AIDS, Tuberculosis, Malaria, overcrowding of Prisons, the inadequacy of the Police and Security agencies, Ethno-religious crisis, kidnapping, political assassinations to name but a few.

His analysis is scholarly and very informative; the views he expresses are incisive and well thought out and would therefore contribute to the ongoing debate on the current state of the nation. This Lecture will be valuable to scholars and researchers interested in the emerging field of Law and Development.

Prof Epiphany Azinge, SAN

Director General

July 2011

**BEING PART OF HIS ACTIVITIES WITHIN
THE TWO YEAR TERM ON
5TH JULY 2011**

Introduction

The choice of this topic is predicated on the fact that as the occupier of the Chair on Law and Development it is incumbent on me to write on something that has bearing on development. Where else can one begin than life itself, for the development of human life through law is the ultimate goal of this Chair?

This work will be prefaced by the following from a concerned Nigerian writing two years ago:

In Nigeria I wonder whether human life is just a dream, from which we are never really awake as some great thinkers claim. Are we submerged by our feeling by our loves and hates, by our ideas of good, bad, beautiful and awful? Are we incapable of knowing beyond those ideas and feeling? Or we are just concerned about self preservation and perpetuation? With all the happenings in the current dispensation of numerous preventable deaths in Nigeria from plane crashes, road traffic accidents, killing soldiers and civilians, pre-employment deaths, post employment death, i.e. Pensioners

queuing up for their pensions and dying in the process, harvest of deaths in churches, political assassinations, death from communal clashes to Niger Delta youth. Killing soldiers and innocent people. One is asking how much is a life worth in Nigeria? What of when parents and children of politicians or well to do individuals are kidnapped and ransom placed on them, what really dictates the value of the ransom?

For isn't the worth of a life the most profound and elusive mystery of them all, unknown to even the greatest minds in Nigeria? As it stands surely any one who tells you they have the answer is joking, mad, or simply mistaken...?¹ Well I am not joking or mad or simply mistaken I will attempt.....?

This work shall be divided into six unequal parts; we shall look at life generally, secondly, the constitutional provisions relating to life in Nigeria shall be examined in relation to a similar provision under the Indian Constitution. Thirdly, the judicial interpretation shall be explored in view of our common law judicial heritage and the Indian reality. Fourthly, challenges to the right to life in Nigeria shall be highlighted, fifthly suggestions as to how to improve the right to life shall be made before sixthly, the conclusion of the work.

1. See Anyanate Ephraim Friday 27th March 2009. 12:17. See also Sonala Olumhense: "What is a Nigerian Life Worth? In *the Guardian* March 7th, 2010 p. 65.

A writer once wrote that to understand life is to understand death. For both are inextricably related. Only a fool fight to die. The wise fights to live for he who fights and runs away lives to fight another day.²

He argues that:

the right to life presupposes the existence and availability to all of certain basic facilities such as food, health, shelter and education. The right to life to be maintained needs food which has to be produced by members of the society all of whom have this right to life. Thus the right to life is linked to the right to work in order to obtain means of subsistence to procure food and shelter...³

We are in agreement with the writer who argues that “the relationship of the right to life to human security should be obvious. If one constantly has to live with the fear that one’s life can be taken arbitrarily or summarily by one’s government, one cannot meaningfully participate in

2. See Smrvhi Uchegbu: “The Concept of Right to Life Under Nigeria Constitution in *Essays in Honour of Judge T. O. Elias*. Edited by J. A. Omotola. P.136.

3. *Ibid* pp.151-152.

society. Therefore without the respect for right to life there cannot be an honest discussion of human security...⁴

Nigerian Constitution from 1960 to the current 1999 Constitution had always provided under the Chapter on Fundamental Human Rights, sections guarantying the right to life. For instance, under section 33 of 1999 Constitution, it provides as follows:

- (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence at which he has been found guilty in Nigeria.
- (2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law of such forces as is reasonably necessary:
 - (a) For the defence of any person from unlawful violence or for the defence of property;
 - (b) In order to effect a lawful arrest to or to prevent the escape of a person lawfully detained; or
 - (c) For the purpose of suppressing a riot insurrection or mutiny ...”⁵

In *Kalu v. State*, the Supreme Court in Nigeria stated that the right to life in Nigerian law is not absolute but qualified.⁶ M. A. Ajomo commenting on this provision said

4. See African Commitment to Human Right Chap.3. p.26. Right to Personal Safety and Security.

5. See s.33 of 1999 Constitution of the Federal Republic of Nigeria.

6. See 1998 13 NWLR (pg 583) 531 SC and also Omotola *op cit* at p.142.

that life is sacrosanct and deliberate killing is abhorred in all societies the world over. What this provision means is that every one is entitled to respect for his or her life and safety. Police officers or soldiers may not resort to lethal force such as firing live ammunition at people unless their own lives or the lives of others are in immediate danger, and less extreme measures are not available to avert the danger. The Constitution however recognizes some exception to the rule relating to preservation of life... The blanket derogation from the right in matters relating to defence of property and killing of a suspect who resist arrest may need to be reviewed if life is to have any real meaning...’’⁷

In *Aliu Bello and Ors v. A.G. of Oyo State, the Bello* case arose as a result of the unlawful execution of one Nosiru Bello. Nosiru had been convicted of armed robbery by the High Court of Oyo State and sentenced to death. He filed an appeal against this conviction but while his appeal was still pending before the Court of Appeal, the A.G. of the State recommended his execution and this was duly carried out. An action for damages was brought by his dependents. The trial court declared the execution illegal and this was confirmed by the Court of Appeal and later by the Supreme Court which also held that the premature execution constituted an infringement of the deceased fundamental right to life.⁸

7. M.A. Ajomo: *Perspective on Human Rights* p.p 80-81.

8. See Compendium of Human Rights Law Ed. A. S. Ogwuche. Ed also *Bello v. A. G. Oyo State*. (1986) 5 NWLR(pg 45) 828;(1986) 12 SC 1 See also

Few years back in *Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited (Shell & Nigeria National Petroleum Corporation (NNPC))*, the plaintiff Mr. Gbemre of Iweherekan Community Delta State Nigeria sued Shell Nigeria, NNPC and the A.G. of the Federation on the following claims:

A declaration that the constitutionally guaranteed fundamental rights to life and dignity of human person provided in sections 33(i) and 34(i) of the Constitution of Federal Republic of Nigeria 1999... inevitably includes the right to clean, poison free, pollution free and healthy environment.

The court declared that the actions of the 1st and 2nd respondents in continuing to flare gas in the course of their oil exploration and production activities in the applicant community was a violation of their fundamental right to life (including healthy environment) and dignity of human person guaranteed by the constitution and the African Charter. The court further declared that the 1st and 2nd respondents i.e Shell and NNPC were to be restrained from further flaring of gas in the applicants community and were to take immediate steps to stop the further flaring of gas in the plaintiffs' community.⁹

Maiyaki v. State (2008) All FWLR(pt440)618; *Joshua v. The State* (2009) All FWLR (PT475)1626.

9. See s. no.FHC/B/CS/53/05 Federal High Court Benin Judicial Division. 14. November 2005 and (2005) AHRLR 151(Nig. HC 2005).

According to a commentator *Gbemre v. Shell* is a precedent setting case in Nigeria. It is the first judicial authority to declare that gas flaring is illegal, unconstitutional, a breach of the fundamental human right to life and it should cease.¹⁰ But has it?¹¹

In India, Article 21 of her Constitution provides as follows:

No person shall be deprived of his life or personal liberty except according to procedure established by law.¹²

The above which seems almost similar to Nigerian provision in not being absolute have been given very broad interpretation by the Indian Court for instance, in *Maneka Ghandi v. Union of India*, the court said that the right to life goes beyond the fundamental right to life. Thus it was held that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessity of life such as adequate food, nutrition, clothing and shelter over the head.¹³

10. See Teni Odujinrin in *Third Country Report Nigeria* p.3.

11. See *ibid* at pp 11-12.

12. See Article 21 of India Constitution.

13. (1978) ISCC 248 (India Supreme Court Judgment).

Also in *Frannus v. Union Territory of Delhi*, the court said that there is a close nexus between life and means of livelihood. Thus what makes life liveable must be deemed to be an integral component of the right to life.¹⁴

In *Peoples Union for Civil Liberties v. Union of India*, the Supreme Court acknowledged the right to food as a right to life issue under Article 21 of the Constitution stating “what is of utmost importance is to see that food is provided to the aged, inform, disable, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children especially in cases where they or members of their family do not have sufficient funds to provide food for them...”¹⁵

In a similar fashion, the Supreme Court enforced the right to food by creating programmes designed to prevent hunger in all states. On November 28th 2001, the Supreme Court issued an order that significantly made these programmes “entitlement” of all citizens.¹⁶

The point must be made that in India it has been canvassed and accepted that the right to life cannot be construed as simply as to the right to an animalistic existence rather, it must be interpreted broadly to ensure the protection of the right to live in a humane and dignified manner...”¹⁷

It has been contended that the right to food is established in India Constitution as well. That it is most clearly articulated in Part IV of Article 47 which calls the right to adequate nutrition a “duty of the state. However,

14. A.I.R. 1981 SCC 7(Indian Supreme court Judgement).

15. Sarah Smith: *The Right to life in India: Is it really the Law of the Land?*

16. *Ibid.*

17. *Ibid.*

Part IV is considered a cluster of “directive principles” and technically cannot be enforced judicially. Nevertheless in the past 20 years, the Supreme Court has recognized the right to food and other social right as enforceable under Article 21 of the Constitution which provides for the right to life and thus this broad interpretation allows for the enforcement of the right to food via Article 21; moreover it narrows the distinction between civil rights and social rights.¹⁸

Expansion of the Right to Life in India

It has been contended that the meaning of the word life includes the right to live in fair and reasonable condition, right to rehabilitation after release, right to livelihood by legal means and decent environment. The expanded scope of Article 21 has been explained by the Apex Court in the case of *UNNI Krishnan v. State of A.P.* The Apex Court itself provided the list of some of the rights covered under Article 21 on the basis of earlier pronouncement and some of them are listed below:

1. The right to go abroad
2. The right to privacy
3. The right against solitary confinement
4. The right against handcuffing
5. The right against delayed execution
6. The right to shelter
7. The right against custodial death

18. *Ibid.*

8. The right against public hanging
9. Doctors' assistance.¹⁹

It was observed in *UNNI KRISHNAN* case that Article 21 is the heart of fundamental right and it has extended the scope of Article 21 by observing that the life includes the education as well as the right to education flows from the right to life...²⁰

The Apex Court in the case of *S.S. Ahuwalian v. Union of India and others* held that in the expanded meaning attributed to Article 21 of the Constitution, it is the duty of the state to create a climate where members of the society belonging to different faiths, caste and creed live together and therefore the state has a duty to protect their life, liberty, dignity and worth of an individual which should not be jeopardized or endangered.

If in any circumstance the state is not able to do so then it cannot escape the liability to pay compensation to the family of the person killed during riots as his or her life has been extinguished in clear violation of Article 21 of the Constitution.²¹

Sadly, when the "push comes to shove" in India things seem to be different. According to Sarah Smith "Despite the fact that the Supreme Court has broadly interpreted these documents, the day to day reality persists; individuals are still being illegally tortured in custody and the perpetrators are not being punished".²²

19. See Vidhan Maheshwari: "Article 21 of the Constitution of India- the Expanding Horizons".

20. *Ibid.*

21. *Ibid.*

22. Sarah Smith *op cit.*

The right to food and sustenance is an example of an economic and social right that falls under one's right to life. Although the right to food is protected under both international and domestic law, it too is frequently ignored as a fundamental right to life. Further, despite a case being referred to as "Landmark", its effect is minimal if the established rights are not enforced on a day to day basis in the furthest reaches of the country such as the case in India. Although the judiciary has attempted to establish and enforce the right to food, few people have felt the effects of these courts decisions."²³

Although the Supreme Court has rendered multiple judgments demanding the implementation of preventive programmes, the government still refuses to comply and protect its citizens.²⁴

In desperation, the writer concludes that "although the Supreme Court's decisions are widely known as the "law of the land", in practice they are largely ignored. The government for example continues to act without regard to the so-called landmark cases that are considered revolutionary. Until the culture of the national government as well as state governments change, the Supreme Court judgment will continue to live solely in textbooks and academia and will not have real tangible effect on the common citizens in India ..."²⁵ what a bleak conclusion!

23. *Ibid.*

24. *Ibid.*

25. See Sally Hargreaves "Time to Right the Wrongs: Improving basic Health Care in Nigeria. In the *LANCET*. Vo.359. Issue 9322 pp 2030-2035 8th June

Some Challenges to Right to Life in Nigeria

Nigeria once heralded as the beacon of Africa has fallen somewhat short of this potential; years of kleptocratic repressive dictators and military rule, coupled with widespread corruption have resulted in large-scale neglect and deterioration of public services. No where is this more apparent than within the health sector. Government- run health – care services barely function: half of the population are unvaccinated for routine diseases and a burgeoning epidemic of HIV/AIDS only now being adequately addressed leaves 3.5million already infected and without access to most basic of care. A poorly structured health services that relies on vertical programmes for HIV, tuberculosis and malaria means that coordination is chaotic and already scant resources fail to reach the lower levels in which they are needed most.²⁶

Measured by life expectancy, the general health of the population has taken a nosedive. In 1991 the life expectancy at birth was 53.8 and 52.6 years for females and males respectively, but dropped to 48 years for females and 47 years for males in 2005 six years after reestablishing democratic governance. The decline in life expectancy could be attributed to a sharp rise in mortality among people infected with HIV/AIDS, for while only 50,000 person died of AIDS in Nigeria in 1995, by 2000 the figure

2002. Also [http://www.thelancet.com/journal/ancet/article/p1150.140-6736\(02\)08826-8/full](http://www.thelancet.com/journal/ancet/article/p1150.140-6736(02)08826-8/full) +visited 19/01/2011.

26. See Obiajulu Nnamuchi: “The Right to Health in Nigeria, <http://www.abdn.ac.uk/law/hhr.shtml/> p.8. See also Emeka Annforo: “Life expectancy in Nigeria is now 48. 4 years says UN in *Guardian* Nov. 30 2010 p.1-2.

had risen to 209,000 and is expected to reach 700,000 by 2010.²⁷

The maternal mortality rate (MMR) as a key index for assessing the survival of women in Nigeria is abysmal. Noted by WHO as “one of the highest in the world”, the country recorded 800 deaths per 100,000 live births in 2000. Only recently it was said that Nigeria’s maternal death rate is the second highest in the world. In West Africa about one in every 12 women will die in delivery. In the U.S that number is one in 4,800. Factors contributing to maternal mortality rate include poor health status, illiteracy, poor access to antenatal care, poor nutrition and HIV infection. Most importantly, complications arising from illegal abortions account for a significant proportion of these deaths.²⁸

As a result of highly restrictive abortion laws, women often resort to risky abortion methods employing the services of clandestine abortion providers most of whom lack requisite medical expertise for performing the procedure. Complications arising from such abortions are rampant accounting for a large number of maternal deaths in Nigeria. A study conducted between 1995 – 1997 found

27. Nnamuchi *Ibid* p 9. See also Jide Abraham: “Why Maternal Mortality should be Tackled” in *Weekly Trust* May 7 2010 p.42. See also Cassandra Gaddo: “Edge of Joy” tells harsh Truth of maternal Death in Nigeria. <http://www.chicagonow.com/blogs/todaychicago-women-jobs-money-opinion> 19/01/2011; “will Advocacy help in Tackling Maternal Mortality in North? *Sunday Trust* Jan.10, 2010. P.43.

28. Nnamuchi *op. cit.* p.11 See also Joseph Okoghenun: “Legal Abortion to Reduce Maternal Deaths in *The Guardian* June 4, 2011 p.36.

that there were approximately 610,000 abortions annually at a rate of 25 abortions per 1000 women aged 15 – 44.²⁹

Female Genital Mutilation (F.G.M)

Female genital mutilation is common in Nigeria. The practice is deeply embedded in the culture of many of the ethnic groups in the country and this has assured its survival through christianization, islamization and colonization. In communities where it is practiced FGM is thought of as an ageless ancestral edict that pre-qualifies women for marriage; non-compliance significantly impairs marital prospects and subjects the woman and her family to shame, ridicule and condemnation.

There are four variations of the procedure. Type I or clitoridectomy is the excision of clitoral hood, with or without removal of part or all of the clitoris; Type II or excision refers to the removal of the clitoris, with partial or total excision of the *labia minora*; Type III also call infibulations or pharaonic circumcision involves excising part or all of the external genitalia and stitching/narrowing of virginal opening, and Type IV (unclassified) includes pricking, piercing or incising of the clitoris and/or labia of the four types. The most prevalent in Nigeria are Type I and II particularly in the Southern States.

Although FGM is practiced in one form or another in different parts of the country, there are regional as well as ethnic differences. The highest prevalence rate nearly 60% is found among women of Yoruba ethnic group, compared to less than 1% for Hausa and Fulani women. As for regional differences the rate is highest in the South west

29. Nnamuchi *op. cit.* pp11-12.

57% and the South East 41% compared to the North East(1.3%) or the North West (0.4%). Advocates of FGM argue that removal of female external genitalia particularly the clitoris, decreases promiscuity, promotes cleanliness and aesthetic quality of the external genitalia, increases fertility and reduces parturition- related difficulties.³⁰

Beginning of mid-1990s opposition to FGM has steadily garnered support from the government, the general population and the international community. Drawing on the link between HIV/AIDS and non-sanitary/unhygienic nature of the procedure, (notably) multiple use of non-sterilized equipments) in addition to other health and psychological consequences, local NGOs and an array of foreign partners have been successful in galvanizing popular support for legislations outlawing the practice. Such laws have now been enacted in six states. However, the extent to which these laws are being enforced if at all is not clear.³¹

HIV/AIDS

30. *Ibid* p12.

31. *Ibid* p 12 see the following: Elimination of Female Genital Circumcision in Nigeria in a Publication of Family Health. Dept. Federal Ministry of Health Phase III Federal Secretariat Abuja Dec. 2007 WHO plot 617/618 Diplomatic Drive Abuja. See Ruby Leo: “.6m cases of Female Genital Mutilation recorded annually in *Daily Trust* Feb. 11, 2011. P4. Yetunde Arebi: “Different forms of Female Genital Mutilation” in *Vanguard* 07/08/2007; Frances A. Althans: “Female circumcision: Rite of passage or violation of Rights”. In *International family Planning Perspective* Vol.23.no.23 Sept. 1997.”African States push for UN ban on female circumcision” *Daily Trust* May 4, 2010 p.18. Mulkat Mukail: “Female circumcision why the practice still continues *Daily Trust* April 9, 2010 p.37.

The most common form of HIV infection in Nigeria is through heterosexual contact. It is estimated that this form of transmission accounts for 84% of all infections with other modes such as mothers to child transmission, accounting for 14% and 2% for the remainder. At 3.9% the adult prevalence rate of HIV infection in Nigeria pales in comparison to other African countries such as Zimbabwe, Lesotho and South Africa, but the impact in terms of raw numbers is staggering. A 2006 report estimated that 2,900,000 Nigerians were HIV positive, the third largest number after South Africa and India. It has also been estimated that 930,000 children under the age 17 have been orphaned in Nigeria as result of HIV/AIDS.³²

Tuberculosis

T.B is another deadly disease reportedly ravaging Nigeria. It was declared a national emergency by the Federal Ministry of Health in 2006. Cases of T.B. infection has risen sharply in recent years. According to WHO, one-third of the world's population is currently suffering from T.B. and Nigeria has the fourth largest number, with approximately 373,682 estimated new cases annually.³³

Rising cases of HIV infection is complicating efforts at combating the T.B burden. This is because prior infection with other diseases particularly those that affect the immune system such as HIV/AIDS, renders one more susceptible to developing an active T.B. disease. The rate of HIV infection among T.B. patients is greater than among the general population skyrocketing from 2.2% in 1991 to

32. Nnamuchi *op. cit.* pp12-13.

33. *Ibid.* p14.

19.1% in 2001 and an estimated 27% in 2003. It is reported that about 1 million adults between the ages of 15 and 49 living in Nigeria are infected with both HIV and T.B. Thus, given the growing number of HIV/AIDS patients in Nigeria, there is real danger of continued growth in the number of T.B. infections and resulting mortality.³⁴

Malaria

In addition to the scourge of HIV/AIDS and T.B., malaria is another serious epidemic that is yet to be brought under control. It is number one public health issue in Nigeria, accounting for 25% of under 5 mortality, 30% of total childhood mortality and 11% maternal mortality. According to recent reports, 20% of the global malaria cases occur in Nigeria, with approximately 110 million people affected annually and majority of outpatient visits being malaria-related.

Most Nigerians are likely to suffer at least one episode of malaria in their life time, but the vast majority experience multiple bouts. The economic impact of the mosquito borne diseases is not insignificant. It is estimated that the cost of treatment and loss of productivity and earnings as a result of sick days may be high as 1.3% of annual economic growth.³⁵

34. *Ibid* p.14.

35. *Ibid* pp14-15 see also the following: "Our efforts to Eradicate Malaria this Year -F.G.(Health Report) in *DailyTrust* April 27, 2010 p44. Richard Tren and Dipo Salimonu: "Killing the Malaria Killer" *The Guardian* Friday April 23, 2010 p51. Suzan Edeh: "Malaria kills 300,000 Children, 5,000 Pregnant Women Yearly" In *Vanguard* June 5, 2010 p7.

Child Health

One of the greatest challenges facing the health system in Nigeria is in the area of child health. Despite ratification of the major international treaties on the rights of the child and enactment of a child-centred domestic legislations in 2003- the Child- Right Act available data paints a depressing picture. According to WHO, Nigeria is among five countries that contribute 50% of the annual global mortality among infants and children under five years of age. Poverty, poor health status of mothers, high prevalence of malaria, pneumonia, measles, diarrhea, HIV/AIDS, malnutrition and inadequate immunization coverage in the country are blamed for most of these deaths.³⁶

Nigeria has an abysmal infant mortality rate (IMR) reported to be 85 and 195 deaths per 1000 live births in 1990 and 1995 respectively. In 2005 the figure stood at 101 but slightly declined to 97 the following year. Worse still, Nigeria was among twelve countries identified in a recent report by the African Development Bank as regressing from, and in danger of not meeting the 2015 M.D.Gs. of reducing infant mortality by two thirds. I.M.R was found to be higher in rural communities than in urban areas and this was attributed to disparity in access to health care as health facilities are more readily available to urban residents than rural dwellers. Current efforts at combating morbidity and mortality among children centre on expanded immunization programmes.³⁷

36. Nnamuchi *op. cit.* p.15.

37. *Ibid.*

As if the above were not enough we have what some call child witchcraft. Child witchcraft is the superstitious belief that children can be witches and wizards or that infant can or do magically turn themselves into birds or insects to suck blood or mysteriously inflict harm. It is the belief that children have evil powers which they can use to destroy people, particularly their family or neighbours.³⁸

Witchcraft on children takes three forms: accusations, confession and persecution. Children are accused of being witches and wizards. They are blamed for whatever goes wrong in their families. This could be death, diseases, business failure, accidents or childbirths difficulties. Children are accused of witchcraft at home by parents and family members in churches by ignorant and unscrupulous pastors, at shrines by primitive-minded traditional medicine men or witch doctors, or on the streets by mobs and gangs. Children are forced to confess to being witches and wizards or to have taken part in witchcraft activities by family members or by mobs in most cases through physical and mental torture. Children alleged to be witches and wizards are persecuted through torture and inhuman and degrading treatment, which sometimes leads to their death. Such children are starved, chained, beaten, macheted or even lynched. In churches pastors subject children alleged to be witches and wizards to torture in the name of exorcism.

38. See Leo Igwe: "Child Rights and Witchcraft in Nigeria" In *International Humanist and Ethical Union* p.1 <http://www.iheu.org/child-rights-and-witchcraft-nigeria>. visited 12/04/2010.

Witch-doctors force such children to drink potions (poison) or concoctions that can kill them or damage their health.³⁹

In Akwa Ibom State superstition about child witchcraft is common and widespread. Most people in this state as in other parts of Nigeria, believe that children can indeed be witches and wizards or that children can take part in witchcraft activities. This misconception has caused most people to endorse the persecution of children accused of witchcraft or at least to be indifferent to child rights abuses that are committed in the name of witchcraft. Most members of the public regard witchcrafts accusers witch persecutors and killers as heroes not villains or criminals. Recently, the situation in Akwa Ibom has become so bad that it has attracted both local and international outrage.

Thousands of children alleged to be witches and wizards have been tortured, driven out of their home or killed. Some of the child victims rescued by public spirited individuals have found refuge at a camp - the Child Rights and Rehabilitation Network, in Eket.⁴⁰

The point must be made that belief in witchcraft has been a universal phenomenon in all primitive societies not only in Africa and Asia but also in European societies as numerous studies could testify.⁴¹ Sadly, Professor Micheal O. Maduagwu in his recent work on *The Belief in Witchcraft in Contemporary Africa* has this to say: "it is one thing to enact a law against witch-hunts, either of children or adult, it is quite another thing to extricate the people of the superstitious belief underlying the witch

39. *Ibid.*

40. *Ibid* p.2.

41. See Micheal O. Maduagwu: *The Belief in Witchcraft in Contemporary Africa; A Philosophical Discourse*. Stirling-Horden Publishers Ltd. Ibadan 2010. P.5.

hunts”. Thus Gray Foxcroft, the Programme Director of a Non-Governmental Organisation in Akwa Ibom State, Sepping Stones Nigeria (SSN) fighting the child witch-hunt in the state was said to have made this apt observation (quoted by the *Nigerian Guardian* 2008).

The vast majority of Akwa Ibomites including Commissioners, Legislators, Policy makers, Police and Social Welfare teams and even ordinary persons believe that children can be witches. Some people even tend to associate ailments such as epilepsy with witchcraft. The abuse of child rights is likely to continue for as long as this superstition endures.”⁴²

42. *Ibid* p.21 see also the following to demonstrate currency of the phenomenon(1) Luke Onyekakeya: “Agony of Alleged Child Witches in Nigeria in *Guardian* December 7, 2010 p.81. (2) Anietie Akpan: “Child witchcraft NGO’s Cry for help” in *Guardian Sunday* Nov. 14 2010 p.4. (3) Armsfree Ajanaku Onomo: “On trial of the troubled Children” *The Guardian Sunday* Oct. 17 2010 p.26. “On Trail of little witches p. 29 contd from 27. (Akwa Ibom Child Witches Saga)pp 26-29. (4) Leo Igwe: “The Spell of Witchcraft” *The Guardian* Thursday May 20, 2010 p.67. (5) Abba Gana Shettima: “Reflections on the Family (dealing with Child Witch Craft) *DailyTrust* April 23, 2010 p.64. (6) Ahmad Salkida: “Pastor 48 arrested 23 Children in Abuja. Claims: I Cure them of Witchcraft. *Sunday Trust* April 4, 2010 p.4. (7) Patience Turtoe-Sanders: “Under the Spell of a Witch” *The Guardian* April 5, 2010 p.51. (8) Inyang Ekanem: “Do Witches exist? *The Guardian* April 5, 2010 p.51. (9) Florence Amagiya: “Witchcraft: Govt. should sign the Child Rights Act. In *Vanguard* June 11, 2011. (10) Leo Igwe: “On Churches and Witch Hunting” in *Guardian* May 15 2011, p.16. (11) Evelyn Usman: “Police rescue” Witch from angry Mob” in *Vanguard* 19, 2011 p.52. (12) Nathan Nwakamma: “Addressing” Child-witch Syndrome in Akwa Ibom” in *Sunday Trust* March 13, 2011 p.47. (13) Abubakar A. Ibrahim: “Child Witches: Churches Welfare Groups Fight Dirty” in *Sunday Trust* Feb. 20 2011 p.39. (14) Josephine Igbinovia and Amarachi Obiora: “Street children: A Phenomenon of grave concern in Nigeria” in *Vanguard* May 25 2011 p.51. (15) Florence Amagiya “Witchcraft: Government should sign the child Rights Act.”in *Vanguard* June 4, 2011 p.32. (16) Odlile

Prisoners Health

Prison throughout the country are severely congested; some holding 200-300% beyond capacity. This is blamed on an inefficient criminal justice system. About 64% of those detained in Nigerian prisons and needlessly by contributing to overcrowding, are yet to be convicted of crimes. Inmates are housed in dilapidated and poorly ventilated structures dating back to colonial era and lacking basic facilities. They are poorly fed, with most of them relying on outside sources-family and friends for sustenance. Improper nutrition, in addition to lack of potable water, poor sanitary conditions and severe congestion contribute to unhealthy conditions in the prison system. Studies indicate that the health status of the prisoners is disproportionately worse than the general population.

There is a chronic shortage of medical supplies and equipment in prisons throughout the country. The little that is available is quite often misappropriated by corrupt prison

Ayodele "Branding in Akwa Ibom State. March 2, 2009 see also A Human Rights failure in Nigeria: The Practice of Child witch-Branding in Akwa Ibom State:

<http://Nigeria.snitel/01.com/article.ctm/a> Human Rights Failure in Nigeria//1x220kw9ms. (17) Faith Karimi: "Abuse of Child Witches" on rise Aid group says":

<http://edition.cnn.com/2009/world/africa/05/18/nigeria.child.witchcraft/index>

ht. 08/04/2010. (18) Child Witchcraft: The Akwa Ibom Perception <http://www.steppingstonesnigeria.or/node/18/08/04/2010>. (19) Isioma

Madike: Nigeria Akwa Ibom Witchcraft. Riddle. 1st Nov. 2008. <http://allafrica.com/stories/20081103686> htm1.08/04/2010 (20) "Witchcraft in Nigeria- And why it has such hold on peoples minds. Written by C. D. in Lagos Tuesday 19 Nov. 2002. <http://www.marxist.com/witchcraft-nigeria-peoples-minds.htm>. 08/04/2010. (21) Sarah Udoh: Gross further

"Witchcraft, The New Epidemic in Nigeria. Written 05 August 2009. <http://www.nigeriavillagesquare.com/articles/sarah-udoh-grossfurther/witchcraft> 08/04/2010.

officials and treatment is frequently withheld from sick inmates as a form of punishment or graft solicitation technique. Consequently, there is an alarmingly high rate of morbidity and mortality among inmates. According to estimates released in 1999, at least one inmate died per day at Kirikiri, a maximum security prison located in Lagos.⁴³

Access to Safe Water and to Adequate Excreta Disposal Facilities

Access to safe drinking water and adequate excreta disposal facilities in Nigeria is problematic. More than half of the population have neither access to safe water nor excreta facilities. Recent data indicates that only 48% of households in Nigeria have access to improved drinking water sources with access twice greater in urban than rural areas. While safe drinking water is available to 67% of urban dwellers the figure for rural inhabitants is only 31%. An even lower number of 44% have access to adequate sanitation coverage.⁴⁴

Shortage of safe drinking water sources and adequate excreta facilities contribute to high morbidity and mortality in Nigeria, particularly among children. For instance, schistosomiasis or snail fever which typically afflicts people without access to safe water and sanitation and whose daily activities bring them into direct contact with infected water sources is common in some parts of the

43. Nnamuchi *op.cit.* p.17.

44. *Ibid* p 20.

country. The disease ranks second to malaria as a source of human morbidity and mortality in tropical countries.

Reports indicate that there is an estimated 200million people infected with the disease globally. Out of which 100 million reside in Africa, 22 million of them in Nigeria, making Nigeria the worst affected country in Africa.⁴⁵

The point must be made that given that in Nigeria many of the serious diseases affecting its people such as malaria, T.B. and Schistosomiasis originate from unsafe and unhealthy environments, environmental health is of particular significance in Nigeria. Tackling the environmental factors that create or exacerbate the conditions responsible for these diseases is thus a necessary prelude to combating them.⁴⁶

The Nigerian Police and Security Agencies

One Akintokunbo Adejumo recently agreed with the revelation of the content of the damning 19 page report by the Network on Police Reform in Nigeria (NOPRIN) which monitored over 400 police stations in 13 states of Nigeria. They had concluded that:

The Nigerian Police Force is now a danger to public safety and security and the conduct of its personnel could be the cause of a major public health and mortality emergency on a national scale.⁴⁷

45. *Ibid.*

46. *Ibid.*

47. Akintokunbo Adejumo: "The Nigeria Police and Public Safety" <http://www.naijastique.com/blog/view/id303/title> The Nigeria-Police-And Public 18/01/2011.

According to the writer, “it is a most welcome and eye opening report which really further exposed the Nigeria Police Force as one of the most if not the most, incompetent, inefficient, corrupt, brutal security organization in the world. This Report must be a real concern for the Nigerian Public because God help us, if it is not you today it might be a family member or friend tomorrow who will fall into the callous hands or trap of this organization.”⁴⁸

He continues: “infact the Nigerian Police Force no longer protects the Nigerian public rather, the Nigerian public should be protected from the men and women of this out dated and corrupt force, and their in lies the problem because who is going to protect the public? The government or ourselves? The NOPRIN’S coordinator said:

...Commitment to the rule of law rings hollow as long as his administration takes no steps to bring an end to the epidemic of police killings and other abuses in Nigeria. What use is the rule of law if it cannot guarantee the right to life? A Police Force that kills this number of people cannot guarantee public safety.⁴⁹

48. *Ibid.*

49. *Ibid.*

Their leaders-both political and organizational are corrupt hence, they find it difficult to operate as efficiently and humanely as one would expect in a normal conducive society. They are therefore not wholly to blame. They have to eat, pay their rents, send their children to school and generally exist like others, and because all these basic pleasantries of life are not provided to them they have to resort to brutality, torture, corruption and blatant disregard for human life.

This is not an excuse for their bestiality but it should be recognized.⁵⁰

He notes that: “Nigerian Police Force is ill-trained, ill-equipped, ill-orientated, ill-paid, ill-motivated and not respected. These people work more than eight hours a day standing on road blocks and just totting their out-dated weapons. Even the ones in the office never seem to leave for home at night. Are there set hours for them to work? Mind you, I still give them some respect. There have been many instances of uncommon bravery and honesty in a few patches. Recently some courageous policemen were killed while battling armed robbers in various places in the country. What happened to the families they left behind? You ask me, if they will be well compensated for their irretrievable loss. Is there any kind of life Insurance Scheme or Government Grant or Compensation Scheme for Policemen killed in the course of duty as in many Western countries? What exactly do Policemen in Nigeria benefit from?”⁵¹

50. *Ibid* p.2.

51. *Ibid* p.3.

Lastly, he concluded that: “If our society as a whole does not change fundamentally, any attempt to reform any or all of our various governing departments or functions will be an exercise in futility. It is not only the police that are corrupt, the whole society is. Therefore, the society must change before any thing else can change. Our attitude, our morality, our commitment, etc must change...”⁵² We cannot agree more.

Ethno-Religious Crisis

In the recent work of this writer we had looked extensively at ethnicity, conflict, religion and the possible causes of ethno-religious crisis in Nigeria. We had noted that sometimes there is no sharp distinction between ethnic conflict and religious conflict. What this means is that a conflict that begins as an ethnic conflict may end up as a religious crisis and vice-versa.⁵³

In our previous work this writer had commented thus, “Our civil dispensation seems to have unleashed the worst kind of religious and ethnic intolerance. There was the

52. *Ibid* 3-4 see also the following: J. Nnamdi Aduba: “The Rule of Law and the Promotion of Human Rights in Nigeria” in *Rule of Law and Good Governance* ed. E. Azinge and B. Owasanoye 2009. NIALS Lagos pp.110-112 particularly the footnote(56) see also Everyone’s in on the Game” Corruption and Human Rights Abuses by the Nigeria Police Force A publication of Human Rights Watch 2010.<http://www.hrw.org>. see Editorial “Security Agencies and Extra-judicial Killings. *The Guardian* May 31, 2011 p18.

Simeon Nwakaudu: “The Carpenter gets nailed into a coffin” (Angry Naval Rating allegedly beats carpenter to death over unfinished cupboard) In *the Guardian* June 9, 2011 p.12.

53. See J. Nnamdi Aduba: “Ethno-Religious Crisis: Legal Perspective” in E. Azinge and Fatima Bello ed. *Law and Security in Nigeria* NIALS. Lagos 2011 p.244.

Aguleri- Umulari communal conflicts; The Tiv-Jukun, Urhobo-Itsekiri and Ijaw Ife-Mudakeke, Yoruba and Ijaw, Ilaje and Ijaw, Odi, Zaki-Ibiam, Kano, Kaduna, Jos, Bauchi especially (Tafawa Balewa) religious riots, reprisals in Onitsha, Aba, Owerri and Port Harcourt. More recently, the “Boko Haram” religious sect like the Maitesine of the 1980’s, erupted with heavy casualties in Bauchi, Maiduguri, Kano and Katsina.

In all the crisis mentioned above the weakness of the Nigeria Police Force was exploited by ethnic and religious warlords. Although the military was invited and was able to quell the crisis, the toll in human life was enormous, thousands of lives were lost, millions of persons are currently internally displaced in their country, the damage to property runs in billions in terms of cost.

Apart from life lost to armed robbers, recent ethnic militias like the Odua Peoples Congress, Egbesu Boys, Tarok Boys, Bakkasi Boys most of whom are currently baned, are involved in killing of criminals and opponents in the most gruesome ways.

As if the above are not enough, killings of high profile political figures seem to have assumed alarming proportion. The chief law officer of the Federation, Chief Bola Ige was killed in his house in cold blood in Ibadan, Oyo state. Others followed suit. Just recently, a head line appeared in the *DailyTrust* Newspaper-Two Kogi Local Government Chairmen kidnapped, 3 cops killed. The attacks were brazen and bold.⁵⁴

Between when the above observations were made and now things do not seem to have changed much. There were

54. See *Rule of Law and Good Governance op. cit.* pp 110-112.

pre-election killings in various states; the crisis in Plateau State seem not to have an end in sight, added is the most recent post-election mayhem in some Northern states leading to the killing, for the first time in our history, (National Youth Corp members) performing their patriotic duties. The fear of “Boko Haram” seems to be the beginning of wisdom as they strike at any where they choose; nobody seem spared even the revered Traditional institutions. Security operatives there seem at a loss on how to deal with the matter.⁵⁵ On the writers recent visit to Maiduguri, it seemed a ghost town, as people deserted the city centre. Like we stated in a previous work in the above situation, it is difficult to assert that the right to life is not under threat.⁵⁶

Way Forward

Judicial creativity is needed by our Judges. We should look up to India for activism and dynamism. The objectives of our Chapter Two of our Constitution can be realized without any constitutional amendment which is tedious and cumbersome.⁵⁷

55. See 2010 country Reports on Human Right Practices(Nigeria) published April 8, 2011. Also Sabella Abidde: “Post- election Violence and Failure of Intelligence” in *Sunday Trust* May 1, 2011 p.24. See also recent attack on the Police Headquarters in Abuja- in Sani Ologun: “Police recover engine, chassis number of suicide bombers car” in *The Nation* 2010 June 21 p.2.

56. See *Rule of Law and Good Governance* p.112.

57. For guidance they can look the various views canvassed in E. Azinge and B. Owasanoye: “*Justiciability and Constitutionalism: An Economic Analysis of Law*. NIALS 2010 Lagos.

It is sad that unions in tertiary institutions have to go on strike for very long periods to remind our governments of the need to increase the budgetary allocation to education from 7.9 per cent to 26% which is the minimum standard recommended by UNESCO. Illiteracy plays a large role in the recurrent communal and religious crisis which has been ravaging the country the latest being the “BOKO HARAM”.

Provision of basic infrastructures like electricity, water, good roads, health care etc will make life more meaningful. A situation where most of the urban centres are in complete darkness as a result of lack of electricity is definitely not the best, not to talk of the almost privatization of water and security everybody seem to be on his or her own. The state has literally abandoned some of its basic responsibilities. Education remains the best way of tackling some cultural practices that affect the rights of our women and children.

Re-orientation of the security officials, especially the police and military will go a long way in restoring a dignified relationship between the civil population and the police and members of the Armed forces. For now they remain the greatest threat to the enjoyment of human rights particularly the right to life by civilians. Impunity seems to be their watch word.⁵⁸

Current poverty alleviation programmes seem to have failed woefully, unemployment and abject poverty appear to be the lot of majority of our people. Massive efforts are required to put in halt the menacing approach of social dislocations resulting there from. A revolution may not

58. See *Rule of Law and Good Governance* pp 127 especially footnote (105) detailing the abuse of human rights by security agencies .

occur but definitely a society where the majority are poor-70 percent living on less than a dollar a day is not a decent one.⁵⁹ A situation where the poor cannot sleep because they are hungry, the rich cannot also sleep because the poor are awake! Is not ideal either.

Conclusion

In this work we looked at concept of life generally, then the provision in the constitution for its protection. We examined its judicial interpretation both in Nigeria and India in view of our common law heritage. The limitations in India were explored so were the challenges in Nigeria highlighted. A way forward was proffered before the conclusion of the work.

59. *Ibid* p.127.