

Status and Limit of Human Rights: Right to Life under Nigerian Constitution, 1999 with Focus on Rural Women in Akwa Ibom State

Aniekan Mendie

Department of Business Administration & Management, Federal Polytechnic, Bauchi, Nigeria

Doi:10.5901/mjss.2014.v5n26p154

Abstract

The notion of human rights is now entrenched in most constitutions around the world. Many writers agree that the notion involves a set of inalienable rights endowed by the Creator in to the nature of man to make meaning of humanity of man; to the extent that its alienation is to be permitted by law. This paper, analytically explained the status and limits of the rights which are still subject of heated debate today. In explaining the thematic concepts of these series, the paper recognized right to life as the pivot of all rights and picked it out from the beautiful array of human rights guaranteed under the constitution of Nigeria, 1999 and analyzed it; keeping focus on women issues connected thereto. Provisions of statutes, materials from judicial precedents, law Texts, Journals and Newspapers; including cyber world were used in resolving issues under this paper. Findings made revolve around the fact that the constitution drawn to protect right to life also allows killing even in defence property; no matter how meaningless it is in value; that cultural barriers also exist against women's right to life. Hence, the paper made recommendations to improve the state of right as it relates to women in Nigeria and particularly rural women in Akwa Ibom State.

Keywords: Human Rights; Status, Limits of Rights; Right to Life.

1. Introduction

This paper makes effort to ascertain the status and limit of human rights which are still issues shrouded in controversy today. In a bid to explain topical issues cited above, the paper selects right to life for illustration with focus maintained on women's concerns in relationship with the said right in Akwa Ibom State of Nigeria. The paper develops its body under various sub-heads and makes certain recommendations in the end for the purpose of giving right to life as it relates to women a pride of place from the throes of cultural barriers.

2. Status of Human Rights

When a mention is made of the issue of status of human rights, one is referring to the legal position of rights in relation to the highest law of the land. In more precise terms, the issue about the status or standing of these rights links with their position in terms of legality, constitutionality and justiciability. In *Ransome-Kuti v. A. G. of Federation*, (1985) Kayode Eso, JSC held, emphasizing the status and position of human rights. He authoritatively maintained of the rights as being that:

Which stands above the ordinary laws of the land and which in fact is antecedent to the political society. It is a primary pre-condition to civilized existence...and what has been done by our constitution, is to have these rights enshrined in the constitution so that the rights could be immutable to the extent of the immutability of the constitution itself.

In 1989, Kayode Eso, JSC, again remarked in *Saude v. Abdullahi*, (1989) taking a stance he described as multi-causal; neo-earthly, neo-divine of human rights. He said that human rights are:

...not just mere rights. They are fundamental. They belong to the citizen. These rights have always existed even before orderliness prescribed rules for the manner they are to be sought.

It could be realized from the authorities afore-cited that human rights stand above the ordinary laws of the land. It is the entrenchment of the rights in the constitution of a state that described human rights as being fundamental, and gives them the status of being not only legal rights but rights of constitutional dimension. Constitutionalization, therefore, provides "a just balance between the rights of the subjects on the one hand, and that of the government or state on the other hand, (Kayode Eso, 2003: 139).

Prior to the establishment of United Nations Organization in 1945, human rights were recognized with domestic status. The proclamation of Human Rights in the United Nations Charter, 1945 and Universal Declaration of Human Rights, 1948 including other continental or regional conventions and charter, bestows, in modern times, a universal, continental and international status on human rights. Though the UN Charter and Universal Declaration of Human Rights, 1948 have been criticized as lacking in legal force, yet, it could be submitted that they sustain sufficient moral status on human rights, capable of stimulating the conscience of member states to take practical steps toward enactment of substantive and procedural laws for their protection, promotion and enforcement.

The concept of universal and international status of human rights is one of the factors giving rise to the idea of assumption of the controversial universal jurisdiction by countries at international level, upon widespread breaches of the rights. Human Rights have developed in status into a norm of international dimension (*jus-cogens*) such that widespread infractions thereof are regarded as constituting crimes against humanity which any state is authorized to punish.

At domestic level, "violation of these rights is liable to be called to order" (Nnamdi Aduba, 1999: 109). Hence, the government through its tripartite arm of the legislature, executive and judiciary is enjoined to protect fundamental human rights (Nnamdi Aduba, 1999: 109).

3. Limit of Human Rights

The term, "limit" used about rights entails the lawful extent to which a right beneficiary can enjoy his right; beyond with there may be lawful deprivation. One question here is; can we say in absolute terms that fundamental human rights are non-derogable rights? Or limitless rights? The answer to this question can be supplied in the following expression that:

Since human freedom is part of human and human is a finite being, it follows that human freedom is necessarily limited. For there can be no such thing as absolute or unlimited human freedom (Obilade, 2005: 18).

It has been said that "man's exercise of freedom is obstructed by various factors of physical, psychological, social and environmental nature" (Obilade, 2005: 18). Our focus, however, at this stage is fixed on the limitations impose by the law of constitution and other legislation on the citizen's exercise of fundamental human rights. In *Odogu v. A. G. Federation* (2000), it was held that:

Fundamental rights is a right guaranteed in the Nigerian constitution, and it is a right which every person is entitled when he is not subject to the disabilities enumerated in the constitution.

Earlier before the *Odogu's* case cited above, *Somolu J*, in *Asemota v. Yesufu* (1982) declared that fundamental rights enshrined in the 1979 constitution of Nigeria constitute "a people's expression of political and civic and or civil rights; but only to the extent that the strictness or largeness of modern system of government does permit". This judicial declaration entails that there are fundamental rights to be enjoyed but not without limitations.

4. Constitutional Limitations to Right to Life

For the purpose of this paper, one will choose the fundamental rights to life and look at section 33 of the 1999 Constitution of Nigeria for illustration of the various restraints or disabilities limiting the enjoyment of the rights aforementioned. As a matter of law, "human life begins at conception" (Nwamara, 1992: 83), but the personality of a human being may be said to commence existence on birth and ceases at death (Nwamara, 1992: 92). A human being therefore acquires a legal personality at birth. Legal personality gained upon birth is a device by which law ascribes powers and capacities to human beings (Garner, 1990: 1180). Upon birth which is "the complete extrusion of a new born baby from the mother's body" (Garner, 1990: 179), a human being becomes "a person of inherence" (Garner, 1990: 1178). That is a person in whom a legal right is vested; the owner of a right (Garner, 1990: 1178).

It is relevant to trace here that fundamental right to life is by law recognized to attach to man at birth. It is a foremost right; and a foundation on which all other rights rest. The right has since been guaranteed, among others, in S. 33 (1) of the Nigerian constitution, 1999 as follows:

Every person has a right to life, and no one shall be deprive 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.

The African Charter also guarantees right to life to all humans interalia, without distinction of any kind such as race,

ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status" (African Charter, 1981: Article 2). The African Charter in Article 4 clearly stipulates that:

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.

Unlike the constitution of Nigeria, 1999 earlier cited, the African Charter does not enumerate conditions and circumstances justifying deprivation of the fundamental right to life. Besides, the Charter in the Article cited above, only hints that the right may be deprived but not arbitrarily. This means that the right may be limited under the due process of law. Sub section one of Section 33 of the constitution of Nigeria afore cited, apparently guarantees right to life to every person, but it also quickly sets out sentence of death passed by a court of competent jurisdiction as one of the grounds for derogations from same right. To this end, only sentence of death upon proof of capital offences which include murder under s. 319 of the Criminal Code Act, 2004; armed robbery under the Robbery and Firearms (Special Provision) Act, 2004; treason under the Treason and other Offences (Special Military Tribunal) Act, 2004 and sabotage under the Petroleum Production and Distribution (Anti-Sabotage) Act, 2004 are contemplated. All the offences mentioned here must be substantively and procedurally proved beyond reasonable doubt under the applicable laws, including the Evidence Act, 2004 to sustain capital punishment by a competent court depriving any person of his basic right to life. The relevant judicial authority buttressing this assertion is *Udosen v. The State* (2007), a case in which the Supreme Court of Nigeria held that: "the commission of crime by a party must be proved beyond reasonable doubt".

Further, sub section 2 of section 33 of the said Constitution of Nigeria equally provides three more grounds justifying deprivation of right to life by use of reasonable force resulting in death. The subsection is reproduced hereunder for reasons of clarity and easy comprehension as follows:

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 circumstance as are permitted by law, of such force as is reasonably necessary:-
(a) for the defense of any person from unlawful violence or for the defense 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.

By virtue of the foregoing, it could be comprehended that one can justifiably deprive another of his life in exercise of his right to self-defence or in defence of any person under one's legitimate control in circumstance of unlawful violence; or in defence of his property.

The security operatives such as the Police are also allowed by law to impose limitation on right to life in order to effect lawful arrest of any person reasonably suspected to have committed crime; (Section 24 of the Police Act, 2004; Section 271 of the Criminal Code Act, 2004) prevent the absconding of a person in lawful detention; suppress a riot, insurrection or mutiny. One submit with humility, expressing doubt as to whether the Nigerian Constitution in the section herein considered can permit massive bombardment and killing of members of the civil populace in the name of suppressing "riot, insurrection or mutiny".

Our Constitution also allows the use of force as is reasonably necessary by one in the killing of another in defence of his property not even life. One wish to align with the submission of M. A. Ajomo (1992: 81) that: "...the blanket derogation from the right in matters relating to defence of property and killing of a suspect who resists arrest may need to be reviewed, if life is to have real meaning". In *Musa v. State* (1993), the Court held that:

the provision of S. 30 (now s. 33 of 1999 Constitution) of the 1979 constitution of Federal Republic Nigeria allows a person to use such force as is reasonably necessary for the defense of any person from unlawful violence or for the defense of property. A person is even entitled to kill in the defense of property provided the force used is reasonably necessary in the circumstance.

The bracket above is supplied by the writer.

The issue in focus to be importantly considered here is that of the test of reasonability justifying the killing of one by another under the law under consideration. In *Musa v. State* (1993) earlier cited, Muhammad, JCA handled the test of reasonability and extensively explained same as follows:

Taking into consideration the circumstances of this case, the appellant's apprehension that he was in danger of death or grievous harm, when he found the door closed from inside is reasonable. He was aware that thieves have broken into the house. He reasonably believed that they were armed. He was told that at least one of them was carrying knife.

When he kicked the door open and saw movements, he had no way of knowing what the person in the room was going to do. The person might attack him. He was therefore justified in shooting to protect himself.

From the purport of the above judicial pronouncement, it could be understood that where one is apprehensive of being in danger of death or grievous harm, he can justifiably kill another in his self defense. The right to private defense is restricted by the Penal Code Law in ss. 62, 63 and 64. Section 65 of the same Penal Code Law, however extends the right of private defense of one's body to the voluntary causing of death limiting right to life to only when the act to be repelled is of any of the following descriptions namely:-

- a. an attack which causes reasonable apprehension of death or grievous hurt; or
- b. rape or an assault with the intention of gratifying unnatural lust;
- c. or abduction or kidnapping.

There is, yet, another instance of constitutionally permissible derogation from fundamental right to life. In section 45 (2) of the Constitution of Nigeria, 1999 reasonable measures justifiably taken for the purpose of dealing with situations of emergency, situation of lawful act of war resulting in death can lawfully limit right to life. Hence:

a period of emergency means any period during which there is in force a proclamation of a state of emergency declared by the president in exercise of the power conferred on him under section 305 of constitution" (Section 45 (3) of the Nigerian Constitution, 1999).

From the consideration made of the provisions of the Nigerian constitution, 1999, other statutes of the legislature, and the judicial authorities cited above, it could be submitted that fundamental right to life and indeed all fundamental rights are sacrosanct only to the limit permissible by law. It is right in this connection to state that though the sacrosanctity of right to life, among others, can be lawfully tampered with, yet the constitution and many other laws still protect the right. In further guarantee of protection to human rights, the Constitution prohibits the use of retroactive laws in section 36(8) to limit right to life. The section state that:

No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such offence, and no penalty shall be imposed for any of criminal offences heavier than the penalty in force at the time the offence was committed.(Nigerian Constitution, 1999).

In section 36 (12), it stipulates again, that:

a person shall not be convicted of criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law.(Nigerian Constitution, 1999).

The term, "written law" includes any other Act or law of the National or State Legislature.

The discussion above, significantly mean that derogation from fundamental rights cannot be lawfully justified on grounds of retroactive laws or commission of an offence unknown to law. In this regard, S. 306 of the Criminal Code equally prohibits killing of any person except such killing is authorized, justified or excused by Law.

5. Right to Life and Women Related Issues

5.1 Women and abortion

In Nigeria, sections 328 and 236 of the Criminal and Penal Codes define the offence of the killing of an unborn child. These Codes provide for the punishment of life imprisonment for any person who by act of omission or commission prevents a child from being born alive by a woman about to be delivered of a child. The only statutory exception made under sections 297 and 235 of the Criminal and Penal Codes covers a situation where the unborn child may be killed for the preservation of life of the mother. This exception, however, is what is providing lawful justification for the procurement of abortion though generally criminalized under the Nigerian criminal law system. Application of this exception is readily noted in *R. v. Edgal (1937)* where it was held that abortion performed in preservation of the life of a pregnant woman is lawful. Abortion forms a significant part of women reproductive right concern and touches not only on right to life, but right to privacy and family life, freedom of thought and religion guaranteed under sections 33, 37 and 38 of the Nigerian Constitution, 1999 has amended. Hence, over-criminalization of abortion under the Nigerian law is not desirable in the face of over whelming need for legal but regulated abortion procedures to be applicable in circumstances justifying artificially but medically induced termination of pregnancy (foetal formation) in preservation of the life of the pregnant

woman. Over - criminalization of abortion contributes to limitation of right to life of women in Nigeria. In some cases, women are taken to Prayer Houses for divine intervention for normal delivery when abortion medically carried out may be sufficient to save the woman from untimely death.

5.2 Women and euthanasia

Euthanasia is not only related to women. It needs be stated that under the Nigerian legal system, euthanasia as a derogation from right to life is not provided for. Euthanasia which "is the intentional killing by act or omission of a dependent human being for his or her benefit". (Justus Sokefun, 2008: 77) may even be treated as a crime punishable under the Criminal or Penal Codes respectively. It is therefore, not a lawful limitation to right to life in Nigeria. So also is attempt to commit suicide outlawed under Section 231 of the Penal Code Law. Dr. Akinola Aguda, a prolific legal text writer held a different view, supporting suicide and euthanasia analysed in the light of the controversial concept of the right to die. Right to die is defined to mean the right of a terminally ill person to refuse life-sustaining treatment. (Garner, 1990: 1351). For Aguda, right to die exist as a necessary adjunct right to life. He said:

suicide is an offence which ought to be decriminalized. He asserted that suicide is a manifestation of the illness. He asked, what does the right to life means when indeed he feels he will be happier if that very life is taken away from him? It does not matter to him whether he lives or not. (Aguda cited in Justus Sokefun, ed. 2008: 77)

In Aguda's view, suicide is allowed and one can terminate his or her life through mercy killing, particularly in circumstances of terminal diseases to end his or her suffering. It is submitted with due respect that Aguda's view that when a man feels he will be happier, if his life is taken away, life ought to be taken away, is not without critical defect. Our position is that no man or woman can retain the sensibilities of sustaining the experience of happiness as soon as his or her life is snuff out, and so, one cannot be happier upon death. Indeed, the idea that he who has a right to life, also has right to death is a confusion of the opposites, connoting a denial of right to life not according to the law, at least in the Nigerian legal context. From the stand point of the sacredness of fundamental right to life, one wish to suggest that instead of assisting a human person with his dignity to die, he may be medically managed under circumstances as may be reasonably necessary and possible until he dies a natural death, even, in death, he ("he" includes feminine gender here) needs not be treated with indignities.

5.3 Women, culture and right to life

In Akwa Ibom State of Nigeria to be specific, women are still suffering under the clutches of crude customs. Akwa Ibom State is located at the South of Nigeria and it is made up of Thirty One Local Government Areas. For instance, in the tribes of Ibibio, Annang and Oron of Akwa Ibom State, rural women are culturally confined to child-bearing role and real property rights are denied to them. A rural woman is put in a reproduction process time and again with no right of considering spacing and family planning at all. Thus, the woman delivers children to the exhaustion of her health. The right to life of a woman depends largely on her reproductive rights which include on the number and spacing of her children. Matters of reproductive health were worsened in the past by the practice of female genital mutilation. The practice was aimed at the removal of clitoris in the cultural belief of curbing promiscuity in women. The practice was dirty, unhygienic and un-clinical. It constituted a cultural barrier against right to life as it exposed women to severe wounding and serious health hazards. Thanks to intensive and extensive education and enlightenment which caused the so-called female circumcision to ebb away in the custom of the people of Akwa Ibom State.

Furthermore, a woman now is not culturally allowed to inherit landed property of her father or husband. Thus, inheritance and ownership of real property follow patrilineal lines in the society and only male children are entitle to property. Women then can only be allowed to exercise usufructory rights which may be denied also at the slightest show of any misbehavior. The rural woman in Akwa Ibom state existing culturally without capacity to inherit and own landed property is condemned to poverty all through her life. The woman not being in the propertied class in the society is having her right to life reduced to nothing. She has no access to material and financial resources to assert her rights; including right to life

6. Conclusion

It is hoped that the recent supreme court judgment in Mrs. Lois Chituru Ukeje & Another v. Mrs Cladys Ada Ukeje (2014)

is capable of putting an end to denial of property right of women through barbaric cultures in Nigeria. In that case, the Supreme Court nullified the Igbo customary practice which forbids a female child from inheriting her late father's property. The court authoritatively held that "no matter the circumstances of birth of a female child, such a child is entitled to an inheritance from her father's estate" (Tobi Soniyi, 2014). This judgment stands to be followed by Courts under the Supreme Court in Nigeria. It represents the correct interpretation and clear reaffirmation of property right of women guaranteed under Section 42 (1) (a) (2) of the Nigerian constitution, 1999 as amended.

7. Recommendations

1. The Supreme Court of Nigeria which is the highest court of the land is respectfully urged to maintain the trend of the liberal decision in Ukeje's case when it comes to matters involving right to property enhancing the right to life women. Hence, rights provisions in the Constitution should be given generous interpretation and application by Courts.
2. Courts within the lower hierarchy to the Supreme Court are also urged to emulate the Supreme Court of Nigeria in nullifying primitive cultures denying women's right to life and property.
3. Over-criminalization of abortion should be de-emphasised so as to permit medical abortion in necessary circumstances to save the life of the pregnant mother.
4. Human rights education should be taught specifically from primary six to the tertiary institutions in order to create awareness over rights related issues.
5. Non-governmental organizations and human rights related agencies of government should do more in terms of enlightenment of the rural dwellers over rights issues. They should help in documentation of rights abuses and also assist victims of rights abuses in seeking redress in courts and other institutions of justice.
6. Traditional and Religious leaders should also take up the responsibility of advising their subjects and members to do away with barbarities adversely affecting right to life of women.
7. Capital Punishment should be abolished in the constitution and any other law, since it constitutes a multiplication of death denying right to life. Capital Punishment should be replaced with life imprisonment just to respect the sanctity of human life.
8. The making of will is hereby suggested to be adopted by parents and husbands to bequeath property to women, so as to overcome any uncivilized customary practice denying right to property of women.

References

Cases and Statutes

- Asemota v. Yusufu (1982)3 NCLR, P. 419.
Musa v. State (1993) 2 NWLR Pt 277, P 550 at 553.
Odogu v. A. G. Federation (2000)2 HRLR p. 82 at 86.
R. v. Edgal (1937)4 WACA, 133.
Ransome – Kuti v. A. G of Federation (1985) 2 NWLR Pt 6, P. 211.
Saude v. Abdullahi (1989) 4 NWLR pt 116, P.389 at 418.
Udosen v. State (2007) 146 LRCN, P. 771 at 775.
African Union (1981) African Charter on Human and Peoples' Rights.
Constitution of Nigeria, (1999) as Amended.
Criminal Code Act, LFN 2004.
Evidence Act, LFN, 2004.
Penal Code, LFN, 2004.

Books, Journals and Newspaper

- Aduba, N. (1999) "The Protection of Human Rights in Nigeria" in Obilade, A. O. ed; Text for Human Rights Teachings in Schools. Lagos: Constitutional Rights Project.
Aguda, A. (2008) in Sokefun, J. A. ed. (2008) Human Rights Law Course Guide. Lagos: National Open University of Nigeria.
Ajomo, M. A. (1992) "Fundamental Human Rights under the Nigerian Constitution" in Akpamgbo, C. ed. Perspectives on Human Rights. Lagos: Federal Ministry of Justice of Nigeria.
Eso, K. (2003). Further Thoughts on Law and Jurisprudence. Ibadan: Spectrum Books Ltd.
Garner, B. A. ed. (1990) Black's Law Dictionary 8th ed. USA: West Publishing Co.

- Obilade, A. O. ed; (2005) *Legal Methods I*. Ibadan: Jexel Commercial & Security Printers.
- Nwamara T. A. (1992). *The Encyclopedia of Laws of Federal Republic of Nigeria*, vol. 10. Ibadan: Law and Educational Publishers Ltd.
- Sokefun, J. A. ed. (2008) *Human Rights Law Course Guide*. Lagos: National Open University of Nigeria.
- Soniyi, T. (2014) "Right of Female Child to Inherit Properties Endorsed by Supreme Court of Nigeria" *Thisday Newspaper*, 15th April, 2014 Read Online on 29th July, 2014 at www.thisdaylive.com.