

Right to Life

Provision for the right to life

Basically, the right to life connotes that a human being has the right to live, and should not be killed by another human being. It is considered the most fundamental of all rights because without it, all other rights are meaningless. This is why the right is protected in various ways under national, regional and international instruments:

- **Article 6 of the International Covenant on Civil and Political Rights:** ‘Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life...’
- **Article 4 of the African Charter on Human and Peoples’ Rights:** ‘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.’
- **Section 33(1) of the 1999 Nigerian Constitution:** ‘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.’

Scope of the right to life

A. Death Penalty

There is a raging debate about whether or not the death penalty is compatible with the right to life. While some nations and states in the US have abolished the death penalty, many others like Nigeria have retained it. For example, the *Charter of Fundamental Rights of the European Union*, applicable to all member states of the European Union, provides in Article 2 for the right to life, and goes on to state clearly that ‘No one shall be condemned to death penalty, or executed.’ Similarly, the *Second Optional Protocol to the International Covenant on Civil and Political Rights* enjoins all states to abolish the death penalty.

Various arguments for why the death penalty should be abolished: (a) death penalty is ‘an easy way out’, life imprisonment is more of a punishment; (b) the possibility of executing a person who may later be found not guilty of the offence; (c) there is also the question of whether death penalty, especially where execution is delayed, is contrary to the right to life, human dignity, and amounts to cruel and unusual punishment. Others?

Why should it be retained?

According to Amnesty International, at the end of 2018, **106** countries (a majority of the world’s states) had abolished the death penalty in law for all crimes; **142** countries had abolished the death penalty in law or practice; and **89** countries still retain the death penalty in their laws.

In Nigeria, death penalty remains a lawful, constitutional (s. 33) exception to the right to life.

B. Euthanasia or Mercy Killing

Euthanasia, according to Collins Dictionary, is generally ‘the act of killing a person painlessly especially to relieve suffering from incurable disease.’ Steadman Medical Dictionary defines

it as ‘a quiet painless death and an intentional putting to death by artificial means, of persons with incurable disease.’ This could be done through (1) hastening natural death by altering a life-support mechanism, (2) causing death through direct action in response to a request from that person, (3) by a physician supplying information or means to carry out it out, or (3) killing a person who has not asked for it, often because such a person is in a vegetative state.

There is a gradually increasing trend worldwide to legalise euthanasia (e.g. Japan, Netherland etc.), and view same as not contrary to the right to life. In fact, the proponent construe euthanasia as a ‘right to die’, and argue that this is an offshoot of the right to life. But in Nigeria, the **Criminal Code Act** makes all forms of assisted suicide (euthanasia). for any reason, a crime:

- **s. 311:** A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.
- **s. 326:** Any person who - (1) procures another to kill himself; or (2) counsels another to kill himself and thereby induces him to do so; or (3) aids another in killing himself; is guilty of a felony and is liable to imprisonment for life.
- **s. 327:** Any person who attempts to kill himself is guilty of a misdemeanor and is liable to imprisonment for one year.
- **s. 299:** Consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused.

C. Abortion

Under the section 33(1) of the Nigerian Constitution, ‘every person’ is entitled to the right to life, save in some exceptional circumstances. This gives rise to the question of whether the phrase ‘every person’ includes an unborn child in its mother’s womb. Obviously, this speaks to the issue of the legitimacy or otherwise of ‘abortion’ – the deliberate termination of a human pregnancy when the foetus is not viable. As neither the Constitution nor the African Charter defines ‘every person’ or ‘human beings’, respectively, as regards the right to life, there has been (an intellectual) controversy as to whether the unborn child is entitled to the right to life or not. Two schools of thought characterise this controversy:

- **Pro-choice school:** argues that life begins at birth, not conception; that an unborn child is not a ‘person’ and thus not qualified to enjoy the right to life... because it is not capable of independent existence and survival outside the mother. Thus the pregnant woman can lawfully choose to eject the foetus from her womb at any time.
- **Pro-life school:** believes that life and personhood begin in the womb at conception, and thus an unborn child is covered by the phrase ‘every person’ or ‘human being’ and is entitled to the right to life.

While abortion has been made legal by some countries around the world in line with the pro-choice argument (e.g. see decision of the European Court of Human Rights in *Paton v UK* [1980] 3 EHRR 408), it remains illegal in Nigeria where the law is generally reflective of the pro-life position. **Criminal Code Act:**

- **s. 228.** Any person who, with intent to procure miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or

other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony and is liable to imprisonment for fourteen years.

- **s. 229.** Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her is guilty of a felony and is liable to imprisonment for seven years.

- **s. 230.** Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child is guilty of a felony and is liable to imprisonment for three years.

Abortion is only allowed in Nigeria where it is undertaken to save the mother's life:

- **s. 297.** A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

- ***Rex v Edgal* [1938] 4 WACA 133**, where the court upheld the above general rule and exception to abortion.

Seemingly and arguably in contrast to the above position on abortion in Nigerian, and may be worth considering in interpreting who actually constitutes a 'person' for the purpose of right to life, is **section 307 of the Criminal Code Act**:

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

Exceptions to the right to life

There are a few exceptions to the right to life provided for under section 33 (1) of the 1999 Nigerian Constitution:

1. Sentence of a court in respect of a criminal offence

This is provided for in **section 33(1) of the 1999 Nigerian Constitution**:

'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.

Generally, there are several offences in Nigeria which are punishable by death: e.g. murder or culpable homicide (s. 316 Criminal Code Act); treason (ss. 37 and 49 Criminal Code Act); treachery (s. 49 Criminal Code Act); directing and controlling or presiding at an unlawful trial by ordeal from which death occurs (s. 208 Criminal Code Act); and armed robbery (s. 1 Robbery and Firearms (Special Provisions) Act).

However, children under 17 years of age at the time of commission of the offence cannot be sentenced to death, and any death sentence on a pregnant woman cannot be executed until she is delivered of her baby (e.g. see: ss. 39, 319 etc. Criminal Code Act; and s. 404 of the Administration of Criminal Justice Act).

See: *Kalu v The State* (1998) 13 NWLR (pt 583) 531; and *Amoshima v The State* (2011) ALL FWLR (pt 597) 601 (convicted for armed robbery).

However, where a person sentenced to death is executed while his appeal against such sentence is still pending before an appellate court, such killing will constitute murder and a clear contravention of the right to life of the accused. Convicts on death row retain their right to life until their appeal is heard conclusively by the appellate court and the death sentence confirmed and properly executed.

See: *Bello v AG of Oyo State* (1986) 5 NWLR (pt 45) 828 (accused was sentence to death for armed robbery, but executed by the Oyo State Government while his appeal was pending before the CA. His dependants sued, and the SC held that this action by the Oyo State government was a deprivation of the right to life of the deceased.)

2. Self-Defence or Defence of Another

Under **section 33(2)(a) of the 1999 Nigerian Constitution**:

(2) A person shall not be regarded as having been deprived of his life in contravention of this section [i.e. s. 33(1)], 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*

Thus, for self-defence against unprovoked attack, **section 286 of the Criminal Code Act** provides:

When a person is unlawfully assaulted, and has not provoked the assault, ... If the nature of the assault is such as to cause reasonable apprehension of death or grievous harm, and the person using force by way of defence believes, on reasonable ground, that he cannot otherwise preserve the person [i.e. him/herself or another] defended from death or grievous harm, it is lawful for him to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous harm.

For self-defence against provoked attack, **section 287 of the Criminal Code Act** provides:

When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults him with such violence as to cause reasonable apprehension of death or grievous harm, and to induce him to believe, on reasonable grounds, that it is necessary for his preservation from death or grievous harm to use force in self-defence, he is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous harm.

This protection does not extend to a case in which the person using force, which causes death or grievous harm, first began the assault with intent, or endeavoured, to kill or to do grievous harm to some person [that was eventually killed] before the necessity of so

preserving/defending himself arose... unless, before such necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

Thus, for self-defence to hold, certain conditions must be fulfilled:

1. The original assault must be illegal. (Note: reasonable assault by police during lawful arrest; assault expressly or impliedly authorised by court to enable execution of sentence or a court process, are lawful).

2. The assault must be unprovoked (and if provoked, subject to the requirements under s. 287)

3. There must be reasonable apprehension of death or grievous bodily harm. This does not apply to an abnormally apprehensible person. According to *Okonkwo and Nash*, the test for reasonableness here is objective, and the court must take into consideration the nature of weapon used and disparity in the strength between the assailant and the defender.

See: *Sunday Amala v The State* (2004) 11 MJSC 147 (where a plea of self-defence did not avail the accused in a murder trial as the SC held that, on his part, there was no reasonable apprehension of fear of death or grievous bodily harm); ***Odo Nwobe v The State* (2000) 15 WRN 133** (in a night attack, the deceased pursued and stabbed the accused appellant several times... the CA held that the appellant had, among others, laboured under a reasonable apprehension of fear of death or grievous bodily harm, and was thus covered by the defence of self-defence)

4. Force used in repelling the attack must be reasonable and proportionate to the force used by the attacker, including where the accused started the provocation.

See: *R v Igwe* (1938) 4 WACA 117 (the deceased pursued the accused with a machete which the accused later seized from him and killed him. Self-defence with reasonable and proportionate force); ***Odu v State* (2001) 23 WRN 59** (the appellant seized the cap of the deceased... and when the latter who was unarmed tried to retrieve same from him, the appellant stabbed him to death, pleading self-defence in court. No reasonable apprehension of fear of death or grievous bodily harm from deceased action, and the force applied was disproportionate (considering the weapon used and disparity of strength)); ***Okonkwo v The State* (1998) 4 NWLR143 CA** (deceased broke into the house of the 1st accused at 12 midnight and tried to stab him with a dagger... a scuffle ensued and other members of compound, including the appellant, arrived to help him beat up and overpower the assailant before calling the police. The assailant later died of his injuries. The CA held that, among other elements, the force used was reasonable in the circumstance)

5. For self-defence to avail anyone, they must show that there was no other way of saving themselves from death or grievous bodily harm other than by using such force as they did, and that they at least tried to disengage/withdraw from the attack which led to the application of such force, if in fact there was a reasonable opportunity to withdraw from the attack.

See: *Sampson Uwaekweghinya v The State* (2005) 6 MJSC 1 (...where the SC so held. The accused questioned his uncle on why he picked mangoes from a farm he inherited from his father. The uncle (armed with a machete, an iron rod and a stick) hit him on the head with the hard stick, sending him to the ground. He was hit again when he tried to get up. Dazed, out of

control and fearing the uncle will kill him with his machete, he inflicted machete cuts on the uncle who later died. Self-defence; he had no opportunity to withdraw.)

Particularly on defence of others, **section 288 of the Criminal Code Act** provides that:

In any case in which it is lawful for any person to use force in any degree for the purpose of defending himself against an assault, it is lawful for any other person acting in good faith in his aid to use a like degree of force for the purpose of defending such first-mentioned person.

3. Defence of property

Under **section 33(2)(a) of the 1999 Nigerian Constitution**:

(2) A person shall not be regarded as having been deprived of his life in contravention of this section [i.e. s. 33(1)], 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 property.*

Note that such property may be a dwelling place or other property, movable or immovable.

For a dwelling place (and immoveable property), **section 282 of the Criminal Code Act** provides:

It is lawful for any person who is in peaceable possession of a dwelling-house, and for any person lawfully assisting him or acting by his authority, to use such force as he believes, on reasonable grounds, to be necessary in order to prevent the forcible breaking and entering of the dwelling-house, either by night or day, by any person whom he believes on reasonable grounds, to be attempting to break and enter the dwelling-house with intent to commit a felony or misdemeanor therein. [*The death of such an intruder does not amount to a violation his/her right to life under s. 33(1)*]

See: *Okonkwo v The State* (1998) 4 NWLR143 CA (deceased broke in at midnight with a dagger... court held that force used was reasonable); *Ahmed v The State* (1998) 5 NWLR 493 CA (court held that disproportionate force was used to repel the attack of property by unarmed assailants, thus this exception could not protect the appellant)

However, under **section 292 of the Criminal Code Act**:

It is lawful for a person who is in peaceable possession of any land, structure, vessel or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his authority, to use such force as is reasonably necessary in order to prevent any person from wrongfully entering upon such land, structure, vessel, or place, or in order to remove therefrom a person who wrongfully remains therein [a trespasser or a disorderly person], provided that he does not do harm to such person. (see also s. 293)

Also, this exception is not available in all cases involving defence of moveable property under the Criminal Code Act. For instance, under **section 289 of the Criminal Code Act**:

It is lawful for any person who is in peaceable possession of any movable property, and for any person acting by his authority, to use such force as is reasonably necessary in order to resist the taking of such property by a trespasser, or in order to retake it from a trespasser, provided that he does not do harm to the trespasser. (see also ss. 290 and 291)

4. Death in the process of effecting a lawful arrest or to prevent escape of a person lawfully detained

Under **section 33(2)(c) of the Constitution**:

(2) A person shall not be regarded as having been deprived of his life in contravention of this section [i.e. s. 33(1)], 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... (b) *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained.*

Thus, under **section 271 of the Criminal Code Act**: When a police officer is effecting the lawful arrest, with or without a warrant, of a person committing an offence punishable by death or not less than seven years imprisonment, to prevent the escape of the suspect, the police officer, and those persons lawfully helping him/her to effect the arrest, are permitted to kill him ‘if he cannot by any means otherwise be arrested.’

In cases where under the law a warrant is necessary for arrest, use of force without the warrant is unlawful (**section 271 of the Criminal Code Act**).

5. Death as a result of the suppression of a riot or mutiny

Under **section 33(2)(c) of the Constitution**:

(2) A person shall not be regarded as having been deprived of his life in contravention of this section [i.e. s. 33(1)], 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... (c) *for the purpose of suppressing a riot, insurrection or mutiny.*

Thus, under **section 276 of the Criminal Code Act**: ‘It is lawful for any person to use such force as is necessary to suppress a riot, and is reasonably proportional to the danger to be apprehended from its continuance.’ In this regard, **section 280 of the Criminal Code Act** further provides that. ‘It is lawful for a person who is bound by the laws in force relative to the Armed Forces of Nigeria or to the Police Forces to obey the lawful commands of his superior officer, to obey any command given him by his superior officer, in order to see the suppression of a riot, unless the command is manifestly unlawful. Whether any particular command is or is not manifestly unlawful, is a question of law.’

6. Death resulting from act of war

Section 45(2) of the Nigerian Constitution states that:

Provided that nothing in this section shall authorise any derogation from the provisions of section 33 of this Constitution, *except in respect of death resulting from acts of war...*