# EXAMINING THE CONCEPT OF RIGHT TO LIFE IN POST-COLONIAL AFRICA; NIGERIA AS A CASE STUDY

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**Law School, Griffith College Dublin**

**OJOTISA AANUOLUWAPO ENOCH**

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## DEDICATION

**This academic research is hereby dedicated to my father, Ajaluogun Ojotisa. My Ibadan four-tribal marked man, he who has so far encouraged me to bear the burning of my oil at night.**

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## ABSTRACT

**This academic research is written on the basis of addressing the failing lawfulness, concerning certain actions or indexes which end up as dangers to life of humans in Africa, especially in Nigeria, which is the case study of this research. It has so far been intense in the post-colonial era of Nigeria, that there is an imperative necessity for the intercontinental public to step up aid to the Nigerian people, so as to thwart the breach of right to life. This academic research is not baying for a recolonization of Nigeria. Rather, international establishments such as the African Union, the United Nations, ought to step up their enforceability laws, treaties or international instruments, in other to secure the esteem, creation, and applicability of some laws on the right to life. How can Nigeria, which happens to be one of the top oil-selling countries in the world fail to provide shelter, food, clean and accessible water for its own people? Events such as mentioned above are what in reality constitute a desecration of the right to life. So therefore, this academic research will expose its readers to some events in which there have been judicial and legislative proceedings, pronouncements and decisions on how the right to life would cease to be violated. This academic work does not claim to touch all areas under the scope of right to life.**

# GENERAL INTRODUCTION

## 0.1 BACKGROUND TO THE PROBLEM:

This academic research aims to shed more light on the scope of international law as understood, legalized, maintained, operated and used as a tool of governance and in scope of political relationship in Africa; particularly using Nigeria as a major case study or analysis. However, it is in light of this pursuit of examining governance in Africa, and how it is understood as in connection or opposite to the books of law, that this present paper will be examined.

Moreover, if the author is to address each African state, which is 54 countries on the continent of Africa, there will not be enough time and space to write it all. However, the author is aware that the topic of right to life, is as such broad under the modern wings of international law. But the author of this academic research will strictly limit his discussion on right to life to some aspects of Social and economic rights, educational rights, health and medical care services rights, Environmental health rights, and Political cum legal rights.

## 0.2 PURPOSE AND RESEARCH QUESTIONS OF THE STUDY:

The purpose of this study will be to discuss how international law has fared in African states, discussing both the military and civilian era in post-colonial Nigeria. It is important to note that the theme of right to life as earlier on noted under the "Background" subheading will also be limited. Nevertheless, it is not the limitations or vastness of what right to life is or contains that is important, rather, it is the events, laws, justice, politics, international relations and role of the United Nations in the post-colonial Nigeria, that will be the focus for the author to discuss, in this academic research.

The central research question of this academic work is firstly to raise the question of, how has people's right to life in Africa been abused due to the failure of the international law to curb the such excesses? This is because, there cannot be an abuse of people's right to life, except there is a failure or lacuna which has been provided by law, decree or legal system of such State or nation. It is these failures of international law, or the holding back of the international law and international community such as the United Nations, African Union and others, that this academic research wishes to discuss.

This academic work will be looking into cases whereby, if there are possibly any international laws and or municipal laws regulating human rights, and preventing, correcting and paying damages to people who have been victimized and those who were the cause of the human rights abuse. In addition, if there are international laws on this, the next thing this

academic research hinges on is to look into whether these laws have ever been used a bit or occasionally or whether they are in full implementation. Also, this academic research will be looking into how the loop-holes of international law under the theme of role of the United Nations in protecting human rights, has failed and allowed the gruesome acts of abuse on human rights to life in the post-colonial Nigeria.

## 0.3 AIMS AND OBJECTIVES OF THE STUDY:

The primary aim of this academic research is to examine the concept of right to life in post-colonial Africa, using Nigeria as a case study. This academic research is carried out to checkmate the frequent occurrence of abuse of right to life in Africa in most African states. There are lots of recorded occurrence of human rights abuse of life in post-colonial Nigeria, perhaps Africa at large; and these has sprouted a further discussion on the cause for this. This academic work aims at answering certain questions on how these events have happened, and propose a solution on how to prevent the occurrence of abuse of human rights abuse on life in post-colonial Africa. Some specific objectives of this academic research are hereby highlighted below:

- To address holistically the theme right to life under the fundamental human rights provisions in international law
- To bring to light the gross activities of some governments who committed human rights abuse on life with paying no regard to both municipal and international law
- To increase the knowledge of other persons who might subsequently take up the international human rights programme on the discuss of human rights abuse
- To raise questions on how post-colonial Africa can coordinate itself more politically and march up to the standard of its counterparts in its development of international law
- To shed more light on how the United Nations should contribute to African states' improvement on international law without meddling into the political affairs of these sovereign African states
- To determine whether right to life is limited, only to the medical and basic human understanding of the concept of breath, or whether it spreads across to such other aspects like environmental rights, socio-economic rights etc.

- To also discuss how International Corporate Companies have triggered, contributed and continues to contribute to the occurrence of abuse of right to life on the people in Africa. (Here, discussing the Ogoni People and Oil spillage)

The focus of this academic research as discussed above is to dig up some gruesome occurrence of abuse of human rights to life; and to contribute to the intellectual topic of right to life, as the most important of all human rights. Also, to assert that the theme of right to life is beyond the mechanism of breathing in and out, but also goes into the sphere of what makes up a man, as a healthy part of a standard human society. All these things such as shelter, housing, clothing, good food, educations, and medical care will be discussed.

## 0.4 JUSTIFICATION OF THE STUDY:

The foremost justification for this academic research is that, the post-colonial Nigeria is far behind her counterparts in development of law and bringing to justice of those who have contravened such laws. The African Union and other regional organizations in Africa have been quite slow in pursuing the growth of law and encouragement for African states to nationalize certain international laws on human rights.

## 0.5 RESEARCH METHODOLOGIES, TECHNIQUES AND FINDINGS:

The author will be using the EXTERNAL APPROACH and the SOCIO-LEGAL APPROACH.

This is because the EXTERNAL APPROACH will allow the author to study and use other disciplines, fields of academic and non-academic principles, combined with various pinnacles of Law to further give insight into my research. Other fields such as the socio-political, educational, philosophical, historical, cultural, religious and even journalistic perspectives will all be used in explaining the details of my work.

Secondly, the author will use the SOCIO-LEGAL APPROACH. This is because this style or methodology will allow the research to be as practical as possible. It will encourage the work to give details as to how law is on paper and in contrast to how law is in reality.

The expected findings of the author in his dissertation are also listed as follows:

- * Instances of Human rights abuse of Life
- * How the Human rights abuse of life occurred

- *What the position of the law was and now is on Right to Life: be it the municipal law or international law
- *The remedy to the failure of the law in the occurrence of human rights abuse
- *Highlighting the role of International Law on how it can curb human rights abuse

## 0.6 CONCLUSIONS, DISCUSSION, AND SUGGESTIONS FOR FUTURE RESEARCH:

The dissertation has been structured in such a way that it will encompass various aspects of law such as philosophy, international law, politics, economics, sociology, history, environmental reports, education etc. It is for this purpose that the dissertation has been structured into four chapters. These four chapters are hereby discussed as follows:

- 1. Comparing Nigeria's concept of right to life to the international standards
- 2. Examining Right to Life under the legal framework of (Death Penalty, Death Threats, Police Brutality and Death in Police Custody)
- 3. Examining Abortion, Homosexuality and Euthanasia under the scope of right to life
- 4. Violation of Right to life in the oil producing region by the Nigerian Government and the oil companies

Under the first chapter of the dissertation, the author will be critically discussing the theme of right to life as a philosophical arm of the law. Here, the author will be comparing the judicial perspective of Nigerian courts with some decisions reached concerning right to life in other international courts.

Furthermore, in the second chapter of the dissertation, the author will be examining how the concept of right to life transcends beyond the mechanism of breathing in and breathing out which differentiates the living from the dead. There would be a comprehensive analysis of how valuable the right to life is even while facing death sentence or if still under police investigation. It will appraise the issue of police brutality, as it is currently an issue still in Nigeria.

In the third chapter of this academic research, the author will be breaking down, jurisprudential issue of right to life in the delicate areas of abortion, euthanasia and even on the issue of homosexuality. Unfortunately, in Nigeria currently, these three topics highlighted under this chapter are not morally and legally favored. So, the author will be pointing out instances where it occurred and what the law is domestically and internationally.

Lastly, the author will be examining the right to life further under other scopes of social and economic rights, educational rights and most importantly, environmental rights. Here also, the author will comment on the actions of international corporate companies such as Shell, Chevron and some other oil companies over the oil spillage and abandonment of Ogoni land in Nigeria. The author will be discussing current issues pertaining right to life in post-colonial Africa.

The research will suggest ways in which the international law can help enshrine the habit of respect under the instrument of the law in post-colonial Africa for the right to human life (both in the sense of life as breath and in the sense of what it takes to sustain that breath of life). The research will contribute to the existing knowledge in the following manner:

- the research will surely draw attention of international law scholars to existing need of concern on human rights abuse on life in Africa
- the research will shed more light on the scope and concept of right to life as a legal jurisprudence and practical philosophy in governance
- the research will expose and propose a fill-in-the-gap solution to the lacuna left behind by the failure of international law to address the issues of human rights abuse on life in individual states and at the international sphere

# CHAPTER ONE

## COMPARING NIGERIA'S CONCEPT OF RIGHT TO LIFE TO THE INTERNATIONAL STANDARDS

### 1.0 INTRODUCTION:

This legal academic research begins with the jurisprudential appraisal of the concept of right to life. It aims at exposing its readers to the significance of acknowledgement given by the international law to the concept of right to life. It further seeks to answer and set straight the long intellectual question/debate, as whether there is anything as such as right to life or mere human selfish interest[1]. This academic research is structured in such a way that, it seeks to open up the mind of its readers on the universality conception of right to life, and its regional satisfactoriness and appropriateness too. Furthermore, this work aims to show the significant meaning, implementation and understanding of the concept of right to life based on each independent State's political and legal system.

The first chapter deals more with thorough explanation and historical trace of Nigerian constitutional law system, and its imperative acceptability of right to life; as a paramount part either of the constitution or as mere legislative part of the constitution. It should be further noted that this work aims to show how different government, legislative systems, Head of State and Presidents have related with the concept of right to life in Nigeria.

This work will also touch certain cogent areas of current trivial issues in International law such as; death penalty, abortion, homosexuality, euthanasia, death threats, police brutality, and death in police custody, examining the oil companies and the oil spillage in OGONI-LAND in Nigeria. It is important to note that, this academic research will also be addressing the legal impact of socio-economic, effect and oil-spillage by oil companies in Ogoni-land in Nigeria, in comparison with Oil companies' activities in developed countries.

The author of this academic research is intellectually aware, that the concept of right to life transcends beyond the limited areas the author has highlighted above specifically. But for the reason of time-limitation, required limited words and content, non-availability of time and economic resources to travel down to Nigeria to make use of some literature which are not yet available online and given specific topics to discuss, the author of this academic research will only be touching the few sub-headings mentioned above in earlier paragraph.

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[1] Rorty, Richard. "Human rights, rationality, and sentimentality". In S.Shute & S. Hurley (eds.) *On Human Rights: the Oxford Amnesty Lectures 1993*, (New York; Basic Books, 1993) See also, Mackie, J.L. *Ethics: Inventing Right and Wrong*, (Harmondsworth; Penguin, 1977) See also, Waldron, Jeremy. *Theories of Rights*, (Oxford; Oxford University Press, 1984) See also, http://www.iep.utm.edu/hum-rts/ accessed on 11th February 2016 See also, http://oregonstate.edu/instruct/phl201/modules/texts/text%201/rand.html accessed on 11th February 2016

Therefore, the first chapter will be addressing comparing Nigeria's concept of right to life with those other States at the international standard (*and by international standard, the author means more developed countries than Nigeria*)

## 1.1 BODY OF ANALYSIS:

In other to understand the philosophical evolution of human rights, it is pertinent to first have a deep grasp of what the concept of human rights means. Human rights as a concept can be classified as a Jurisprudence, bearing in mind that it is an avenue for continual development of man, as per his social, economic, legal, political and even natural rights. Even though the word, Jurisprudence is not a universally used word in all languages as it means in the sense used in English language. Yet, one can opt to safely interpret the human rights concept as a philosophy, which was bore out of the yearnings by humans to have some "benefits of existence" separately classified as rights, which are above some laws or norms or customs or even authority.

Furthermore, some have argued that Jurisprudence is not law, and some have said Jurisprudence is philosophy; while some have categorically stated that Jurisprudence is anything that deals with Law, Philosophy, Religion, Science, and Arts.[2] No wonder K. Llewellyn in his academic work said, "Jurisprudence is as big as law __ and bigger." [3] Also in the words of Lord Radcliffe, he is quoted thus,

"You will not mistake my meaning or suppose that I depreciate one of the great humane studies if I say that we cannot learn law by learning law. If it is to be anything more than just a technique it is to be so much more than itself: a part of history, a part of economics and sociology, a part of ethics and a philosophy of life."[4]

However, it is to be noted therefore, that law could not have grown into its present state of contemplative discourse here and there, without the impact of environment, politics, history, psychology, and other disciplines on it. In Dennis Lloyd's textbook, Introduction to Jurisprudence, it is categorically stated therein that,

"...nor is law unique in this tendency to reflect the ideologies of its place and time, for similar characteristics will be encountered in many other fields, in history, ethics,

[2] F.C.S Northrop, The Complexity Of Legal And Ethical Experience (1959),P.6
[3] K. Llewellyn, JURISPRUDENCE (1962), P.372.
[4] Lord Radcliffe, The Law And Its Compass (1961), PP.92-93.

psychology and in all social sciences...however, the close relation of law to the social structure inevitably brings into prominence the ideological context of legal theory."[5]

The doctrine of human rights as a philosophical and legal jurisprudence has its roots in the philosophy of nature-inherent claim by human beings. It is of great significance to know that these philosophical and legal ideas of natural rights were introduced in Western civilization, based on writings and theories emanating around the 17th and 18th centuries.[6]

The first theoretical design of the idea of human rights emerged from the political philosophy of positivists[7], and John Locke[8], which centered upon the despotic rule of the Stuart Kings during that time. Locke sought to identify the basic rights of the individual by postulating the existence of the human person in a stateless situation, which he depicted as the idyllic co-existence of individuals in "peace, goodwill, mutual assistance and preservation". In the state of nature, proclaimed John Locke, every person was endowed as an integral part of being human, with the natural right to life, liberty and estate. The international community recognizes the importance of these concepts that affect man's natural rights and have through conventions and protocols proclaim them in form of treaties which the various participating countries or states who freely append their signatures to these conventions and treaties now domesticate so as to form a bulwark against untoward actions of the government that might conceivably lead to totalitarianism. By so domesticating these laws (such as European Convention on Human Rights, United Nations Conventions on Human Rights and here in Africa, the African Charter of Human and Peoples' Rights) their enforceability in the event of infractions of these rights are assured[9].

The constitution of the federal republic of Nigeria of the year 1999 (as amended), in its Chapter IV, Section 33 1-2(a-c) says;

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

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[5] M.D.A Freeman, Lloyd's Introduction to Jurisprudence 7th Edition, (2001) p 2

[6] Locke, John (2009), Two Treatises on Government: A Translation into Modern English, Industrial Systems Research, p. 81, ISBN 978-0-906321-47-8

[7] Hamburger J Intellectuals in Politics: John Stuart Mill and the Philosophical Radicals (Yale University Press: New Haven 1965); Hart HLA „Positivism and the Separation of Laws and Morals" Harvard Law Review (1958)

[8] Locke J "The Second Treatise on Government" (Oxford University Press: B Blackwell 1956); See also "Contrast with Marx", On the Jewish Question" in RC Tucker(ed.) The Marx-Engels Reader (WW Norton: New York 1972); Ndubisi FN & Nathaniel Issues in Jurisprudence and Principles of Human Rights (Dmodus Publishers: Lagos 2002)

[9] See African Commitment to Human Right Chap.3. p.26. Right to Personal Safety and Security

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

(a) for the defence of any person from unlawful violence or for the defence of property:

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purpose of suppressing a riot, insurrection or mutiny[10].

The Nigerian constitution actually recognises the concept of right to life as sacred, and holds it in high human esteem as possible by declaring that, no one should be denied on purpose by any means, his life. One's right to life also means the legal and natural way to have nature take its way and to die a natural death[11]. That does not mean that one has the right to have his life terminated or death enhanced according to the Nigerian constitution. The right to die is merely the right to die a natural death and not to be kept alive by synthetic technique or ways. However, the constitution goes further to also highlight certain conditions where such right to life might come into deprivation. In addition, in further discussion of this academic research, the author will subsequently discuss this with death penalty, and challenge the State (government) in taking someone else's life for another.

The constitution of Nigeria has express as it looks in print and might sound in its literal interpretation, gave only significance to the concept of right to life to include the process of a living man or woman who breathes in and out only. Looking at the above cited part of the Nigerian constitution, it does not seem convincing enough that the Nigerian constitution has further understanding of other social and economic perspectives that make a life worth being called life. The Nigerian Constitution however identifies some exclusion to the law concerning protection of right to life. However, in the next case to be examined, the Nigerian court highlighted a significant point of law, which was raised, concerning a man who had previously being sentenced to death by a court of law. The Nigerian Supreme Court simply showed how the Nigerian state must observe the sacred recognition of right to life given to any man by nature.

In the case of *Bello and Ors v. A.G. of Oyo State*[12], the distinctive case arose because of the unlawful execution of one Nasiru Bello. The convicted person, Bello, had been

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[10] http://www.parliament.am/library/sahmanadrutyunner/nigeria.pdf accessed on 11th February 2016

[11] In 1966, the International Covenant on Civil and Political Rights was adopted by the United Nations General Assembly; "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 6.1 of the International Covenant on Civil and Political Rights

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

convicted of armed robbery by the High Court of Oyo State and was sentenced to death. The convicted person filed an appeal against the conviction given by the High Court. However, while his appeal was still waiting before the Court of Appeal, the then Attorney General of Oyo State endorsed Bello's immediate execution; and this action was instantly performed. The convicted person's families brought an action against Oyo State in Nigeria before the court for compensations and argued forthwith that the execution of Bello while still having his appeal before the Court of Appeal was illegitimate and it was an ostensible violation in contradiction of his right to life. The trial court confirmed the execution unlawful and this was established by the Court of Appeal and later by the Supreme Court, which also said that the hasty killing of Nasiru Bello constituted an absolute contravention of the deceased person's fundamental human right to life.

The Nigerian constitution has not yet grown out of the impact of military governance for years. In fact, it is still roaming in the realm of literal interpretation of right to life only as to human breath. It must be noted that despite the fact that some of its counterpart at the international level have successfully interpreted the concept of right to life to mean more than life in its literal context and daily usage by a common user of language: the Nigerian constitution is still battling with sustaining the right to life to an adult, without yet expanding its coast of interpretation and enshrinement to children, unborn children and pregnant women. In the popular Irish case of G v An Bord Uachtala[13], Walsh J is quoted thus at p.69 that:

"The right to life necessarily implies the right to be born, the right to preserve and defend (and to have preserved and defended) that life, and the right to maintain that life at a proper human standard in matters of food, clothing and habitation."[14]

In addition, just as Smrvhi Uchegbu also noted in his work 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".[15]

It is important to note that, the right to life of the unborn was introduced into the Irish-Constitution by a legitimate alteration in 1983. The equivalent right to life of the mother is also secure. In 1992, two alterations were made to the Irish Constitution; the right of the mother to travel to another state; and self-determination of information in relation to services

[13] (1980) I.R. 32
[14] Ibid, http://constitutionproject.ie/?p=380 accessed on 11th February 2016
[15] 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

available in another state.[16] For the sake of academic purposes, it is important to show the spontaneous intellectual development shown by Walsh J in the above mentioned case; by clearly recognizing that, right to life transcends into various other ancillary rights, which were not even considered specifically or collectively as at then in the Irish constitution; and he therefore set a precedent suo-moto for the parliament of Ireland to include such rights as he enumerated in the Irish constitution.

The fundamental point being driven at is that, the Nigerian society as a sovereign state making and executing its own laws still has certain clings holding it back on the true demonstration of understanding the concept of right to life for its citizenry. It is necessary to trace the status of the concept of right to life in the history of several constitution Nigeria has operated right from the year of her amalgamation, 1914, by Sir Frederick Lord Lugard.

It is important to note that right before the 1914 constitution, the 1861 conquest of Lagos by the British government and declaration of Lagos as a new crown colony[17], led to the first colonial constitution for Nigeria (even though it was then referred to as Southern Protectorate and the Northern protectorate). The grundnorm instrument operated by the Legislative council outlined its structure as follows; the Chief Justice, the Colonial Secretary and also a Senior Ranking Military Officer that commanded the Imperial forces[18]. It was the duty of the legislative council also to give advice and guidance[19] where necessary to the Governor in charge of the Colony in the course of creating laws (legislation) for the colony. Even though after the amalgamation process of 1914, which also brought about sudden increase in numbers of official and unofficial representatives at the legislature, which was mostly comprised of local Nigerian chiefs from both northern and southern protectorates, the legislative council remained nothing but a mere advisory council. There was no physical evidence of an operating legislature that was coordinated based on a constitution that largely recognized the fundamental human right to life. Actually, the previous mentioned legislative council's guiding document recognized nothing as human rights.

There are very cogent things to note from the Constitutional History of Nigeria before 1922. In the first instance, the Legislative Councils established by the colonial administration were not the accurate political representation of the Nigerian protectorates. This is because;

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[16] http://www.citizensinformation.ie/en/government_in_ireland/irish_constitution_1/constitution_fundamental_rights.html accessed on 11th February 2016

[17] Sir Burn Alan, History of Nigeria. London: George Allen& Unwin. Eight Edition (1978)

[18] Olusanya, G.O. Constitutional Development in Nigeria, 1861-1960 in Ikime, O. (ed.) Groundwork of Nigerian History. Heinemann (1980)

[19] Coleman, J.S. Nigeria: Background to Nationalism. Benin City & Katrineholm: Broburg & Wistrom (1986)

the Legislative councils were largely dominated by foreigners as its official members. Even after some times that some indigenous Nigerian people were selected to represent the Nigerian protectorates at the Legislative councils; those indigenous representatives that were later allowed to participate were not only illiterates and or alien to the real Nigerian protectorates, but were also only could be nominated by the governor. The subsequent addition of the traditional rulers in the legislative Councils was nothing other than a façade of reality for the Nigerian protectorates; as most of these traditional rulers were totally unable to comprehend the official languages, which was British English; nor could they even make any reasonable contribution to the legislative debate. In addition, the laws made by the Council were just another satire of political supremacy by the British Colonial Master over the Nigerian protectorates. This was because in all ascertainable conditions as at then, no resolution passed by the Council could weigh any positive influence and result without the authorization of the then British Governor-General. Henceforth, in certainty and genuineness, the Legislative Council and the Nigerian Council were advisory boards to the governor. It is important to also note that, the people for whom legislations were been legislated were not well versed, and were least involved in the legislative process. Consequently, whatever structure of constitutional set-up passed down by the British colonial administration before 1922 desecrated the correct norm of constitutionalism that sets the populace at the centre of law and revolves around itself again for amendment from time to time.

The Clifford constitution of 1922 and the Richard Constitution of 1946 were also more of legislative and regional structured politically[20]. Both constitutions also had in absence the regiment of fundamental human rights. The same could be said of the Macpherson constitution of 1951 and the Lyttleton constitution of 1956; which were concerned as well about regionalism and freedom for independence respectively[21]. None of the last two constitutions mentioned as well had any form of recognition of fundamental human right to life. However, for this academic research to be well understood, it is necessary to go through a bit of Nigeria's constitutional history. It is necessary to show how, when and at what time the Nigerian constitution started to address the issue or concept of fundamental human right to life. It is important for this academic research to actually bring to light, that the origin of Nigerian constitution has always been more politically and economically

[20] Okonkwo, D.O. History of Nigeria in a New Setting. Aba: The International Press (1962)
[21] Ibid. Coleman, J.S. Nigeria: Background to Nationalism. Benin City & Katrineholm: Broburg & Wistrom (1986); See also, Olusanya, G.O. Constitutional Development in Nigeria, 1861-1960 in Ikime, O. (ed.) Groundwork of Nigerian History. Heinemann (1980)

concerned for the rulers than for the indigenous people who for whom, from whom and by whom the resources being chaired upon by her leaders are gotten from.

In the 1960 constitution, this constitution brought more balanced representation for the Nigerian people more than any of the previous constitutions ever had. It is at this point important to note that the 1960 constitution happened to be the first constitution of Nigeria that recognized the need to include Fundamental human rights into its operation. Moreover, the reason for this is not far-fetched. This was based on the struggle for independence and brutality suffered by the Nigerian people; and centred on the influence of several nationalistic struggles, going on around the world as at then (including the African-American struggle from racism and South-Africa's plight of Apartheid government). One could conclude that such was the reason why the 1960 constitution carried out the inclusion of fundamental human rights for the first time. The 1963 Constitution also came, but this was nothing different from the 1960 constitution; as its only difference was just the severance form the British colonization of many years. The 1963 constitution also fused the concept of fundamental human rights to give defence to people constitutionally, customarily, religiously, politically, educationally and legally; most especially to smaller tribal groups.

The 1979 constitution was ushered in by the year 1975 through the Constitution Drafting Committee that was inaugurated by the Murtala and Obasanjo regime[22]. The 1979 constitution was fashioned as a Federal constitution[23], after the American constitution; the 1979 constitution was a Presidential system oriented constitution[24]. It is important to note that over the years of constitutional developments in Nigeria, the idea of Right to Life can be pointed as, as the first generation right that grew with the Nigerian polity. The right to life is the mother of all rights known to humanity and also, the right to life is an inalienable right and individuals' right to life should not be jeopardized. The attitude and magnitude of how the Nigerian courts perceived and protected the concept of right to life was shown in the above mentioned and discussed case of Bello & Ors v State[25]. The 1979 constitution, under its Chapter IV Section 30, recognised the legal principle of right to life. it is important to note

[22] Report of the Constitution Drafting Committee, 2 Vols (Lagos: Government Printer, 1976).
[23] W.I Ofonagoro, A. Ojo, and A. Jinadu, eds, The Great Debate: Nigerian Viewpoints on the Draft Constitution, 1976/1977 (Lagos: Daily Times Publications, 1977); S. Kumo and A.Aliyu, eds, Issues in the Nigerian Draft Constitution (Zaria/; Institute of Administration, Ahmadu Bello University, 1977); the Debates can be read in Debates of the Constitutent Assembly of 1977-1978, 3 Vols (Lagos: Government Printer, 1978)
[24] Agip, S.P.I. 'The Problem of Incorporating 'the Westminster Model' in a Written Constitution: The Experience of Western Nigeria, 1962-1964 and Subsequent Reaction' Journal of African Politics, Development and International Affairs, Vol. 13, No. 1. Pp 13-32 (1986)

[25] Bello v. A. G. Oyo State (1986) 5 NWLR(pg 45) 828

at this juncture that the 1979 constitution and the 1999 constitution have the same provision, expressly stated concerning the right to life. While the 1979 constitution has the provisions for the concept of right to life outlined under its chapter IV Section 30 of the constitution, the 1999 constitution retained literally the same provisions concerning the right to life under its Chapter IV Section 33.

As earlier noted, the concept of right to life became more conspicuous to the Nigerian populace and laws due to certain political events such as Military and Police brutality that led to protests by the Nigerian people and brought about the giant call for recognition of rights. It is important to note that, it is not the case as such that Nigerian judiciary or courts did not recognize or enhance the enforceability of the right to life on State apparatus like the Military or the Police. The Nigerian courts had always been on the side of the law and the people for whom the laws were made.

The Supreme court of Nigeria in the case of Kalu v. State had clearly avowed that the concept of right to life is of qualified status and not absolute[26]. Below is a long excerpt gotten from the decision of the Supreme Court in the case of OMONYAHUY & ORS v. IGP & ORS concerning whether a deceased person also has the right to life;

"... in resolving this Issue, which boils down to a question of whether the constitutional right to life of a dead man can be enforced by his dependents, we are faced with an uphill task and will be swimming in uncharted waters, since there are no authorities either from the Supreme Court or this Court on the subject, and so, to guide us on this Journey through virgin territory, we must establish where we were, where we are, and where we need to go. [The aforementioned Rules will hereinafter be referred to as FREP Rules] Clearly, the 1979 FREP Rules had shortcomings, which resulted in substantial justice being undermined by legal technicalities, for instance, the requirement that an Applicant must seek leave of the High Court was treated as mandatory - see Udene V. Ugwu (1997) 3 NWLR (Pt.491) 57. Sometimes the discretion to grant leave on the determination of a prima facie case was exercised wrongly, resulting in some credible complaints being shut out - see Ushae V. C.O.P. (2002) 11 NWLR (Pt.937) 499. As for standing to sue; soon after the 1979 FREP Rules was made, the Supreme Court recognized the requirement of personal standing as fundamental for any action, including complaints of human rights abuse. It held that standing would be accorded to a Plaintiff, who shows that his rights/obligations have been, or are in danger of being violated, etc., and that the relevant person for determining standing was set

[26] Kalu v. State (1998) 13 NWLR (pg 583) 531 SC

out by Section 42(1) of the 1979 Constitution. Following this interpretation, Section 46(1) of the 1999 Constitution [similar to Section 42(1)] would accord standing only to the person, whose fundamental human rights are at issue; this was viewed as detrimental to Public Interest Litigation. These threshold principles denied access to genuine complaints of human rights abuse, and to ameliorate the situation, Kutigi, CJN acting on the power conferred on him by Section 46(3) of the 1999 Constitution made the 2009 FREP Rules, under which the present Application was filed. The salient amendments include abolition of application for leave to secure the enforcement of fundamental rights, the doctrine of locus standi and statutes of limitation, filing of verifying affidavit and that of service. The Preamble to the 2009 Rules sets out its overriding objectives, it reads - 1. The Court shall constantly and conscientiously seek to give effect to the overriding objectives of these Rules at every stage of human rights action, especially whenever it exercises any power given it by these Rules or any other law and whenever it applies or interprets any rule. 2. Parties and their legal representatives shall help the Court to further the overriding objectives of these Rules. 3. The overriding objectives of these Rules are as Follows- (a) The Constitution, especially Chapter IV, as well as the African Charter, shall be expansively and purposely Interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by them. (b) For the purpose of advancing but never for the purpose of restricting the Applicant's rights and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like Constitutions. Such bills include- (i) The African Charter on Human Rights and Peoples Rights and other instruments (including protocols) in the African Regional Human Rights system. (ii) The Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations Human Rights System. (c) For the purpose of advancing but never for the purpose of restricting the Applicant's rights and freedoms, the Court may make consequential orders as may be just and expedient (d) The Court shall proactively pursue enhanced access to justice for all classes or litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented. (e) The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of locus standi... In Orjieh V. The Nigerian Army & Ors (supra), the Applicant prayed the Federal High Court for a declaration inter alia that the fatal shooting and killing of her husband by a Soldier, was a gross violation of the deceased fundamental rights to life and dignity of his

human person "contrary to Sections 33 (1) and 34(1) (a) of the 1999 Constitution and Articles 4 and 5 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, LFN 2004, and therefore, unconstitutional and illegal". In his Judgment delivered on 20/2/2013. M. B. Idris, J., pointed out that- "...The Applicant's husband was shot in the head and his brains blown out onto the floor. That was very harsh cruel, dehumanizing, and inhuman. It is all the more pathetic that the Applicant's husband was killed for a business transaction that he knew nothing about: He had not been the person, who transacted the business with the 6th Respondent. He was not even present when the purported business had been undertaken. He died an Innocent man, unblemished, for nothing. In the instant, case, the Applicant's husband's rights were breached with wanton impunity. Clearly, the 7th Respondent acted with the belief that his action cannot be questioned by anyone. Indeed, till date, none of the Respondents took any action and none of them has apologized to the Applicant: - -. The shooting of the deceased, who was unarmed while pursuing his daily activities, was unjustified by any of the exceptions and, therefore, constitute a substantial violation of the Constitution. The right to life imposes on an individual the obligation not to deprive another intentionally of his right to life except in the event of self-defence, suppressing a riot or mutiny or to prevent a lawful arrest..."[27]

The case of Omonyahuy as earlier noted furthered showed how the Nigerian court also valued the concept of right to life, even beyond the living to the dead. The court interpreted the concept of right to life as a right that goes beyond only the status of being alive but also to afterlife of a person here on earth. Furthermore, in a few lines of international comparison with contemporary European case of Fleming v Ireland[28], the Irish court also established the concept of right to life, but frowned against anything as such as right to die. In addition, in the foreign Irish case of McGee V AG[29], the erudite Justice, Walsh J categorically recognised that the State has a great and important obligation to ensure through its laws and state apparatus with all sense of practicability that a citizen's life would never be endangered under any foreseeable circumstance. Furthermore, in the case of Attorney General V X[30], the Irish court also established that a tangible and considerable threat to life, summons the right to life paragraph under the Irish Constitution and that the State cannot take part in any governmental action, which creates a material and significant

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[27] (2015) LPELR-25581(CA) See also, http://lawpavilionplus.com/searchDetails/?link=latestlawreport_ca&pk=91176&from=V26jvCaSxAndgiklW3p94B3z1O%2B2Um%2BdEUuV4mvZc2M%3D accessed on 14th February 2016

[28] Fleming -v- Ireland & Ors – Judgment [2013] IEHC 2 (10 January 2013)

[29] McGee v AG (1974) IR 284

[30] Attorney General v X (1992) 1 IR 1

jeopardy to life of its citizen. So far so good, the Nigerian Judiciary has clearly demonstrated that it respects largely the concept of right to life, and has crowned the right to life as the most sacred of all rights.

Nigeria who is also one of the foremost members of the African Union is a signatory to the African (Banjul) Charter on Human and Peoples' Rights[31]. In Article 4 of the African Charter on Human and Peoples' Rights 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".[32]

In comparing the African charter alongside the Nigerian constitution, as well with the European charter on Human Rights: it is vital to know that apart from the construction of words used (although the African Charter does not enumerate conditions and circumstances justifying deprivation of the fundamental right to life), which was used in convening the importance of right to life: all these instruments of law, have the same meaning on the concept of right to life; and circumstances in which this right to life might be hindered.

[31] (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986)

[32] Ibid, African Charter on Human and Peoples' Rights

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In 1966, the International Covenant on Civil and Political Rights was adopted by the United Nations General Assembly; "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 6.1 of the International Covenant on Civil and Political Rights
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# CHAPTER TWO

## EXAMINING RIGHT TO LIFE UNDER THE LEGAL FRAMEWORK OF (Death Penalty, Death Threats, Police Brutality and Death in Police Custody)

### 2.0 INTRODUCTION:

The growth of international law, is rooted in the colossal events of the world war I and II. The further emergence of curtailing excessiveness and brashness of conflict engagement in international law also brought about the need to find a lasting solution to those who breach certain moral principles of international law and its morality. Nonetheless, the continuous expansion of meaningful territory on international law, spread its tentacles to issues such as death penalty. Even though there are other issues such as death threats, police brutality and death in police custody. But, these other mentioned issues, are more of a legal domesticated issues to be solved and that can be solved based on each States' legislative power. The apparent events which led to the Nuremberg trial, sparked the intellectual debate on whether the international law should readily accept the use of death penalty as a punishment procedure for those guilty of crimes against humanity, war crimes and other heinous crimes as speculated by the United Nations Charter 1945. The continuous use of the death penalty procedure, as a result of retributive justice, which some legal systems still engage in, is a gross violation of the Article 3 of the Universal Declaration of Human Rights (1948).[33] The Article reads thus;

"Everyone has the right to life, liberty and security of person".[34]

Death Penalty could further be classified as a mental torture for prisoners who have been condemned to face this harsh procedure. The constant daily thought and fear being lived, by the condemned prisoners, is humanly sufficient, as such that it could be deduced that, such prisoners go through daily psychological harassment, fear, and other mental uneasiness. Although it is important to note here that, this academic research does not aim at pitching tent with whether the death penalty is right or wrong, because the debate of whether the death penalty is right or wrong is as old as the act of death penalty itself. This academic aims at focusing on the violation of right to life in the process of carrying out the act of death penalty and other legal frameworks mentioned above in the first paragraph.

### 2.1 BODY OF ANALYSIS:

[33] http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf Accessed on 14th June 2016

[34] Ibid.

The Amnesty International has been one of the international bodies that has so far been admonishing countries to respect the international law rule on human rights, especially that of right to life. So far, there has been a number of voluminous cases that have been successfully handled by the Amnesty organization, in other for them to realise the need to carry out substantial domestic legislation for preservation and respect for human right to life and how such right to life can constantly be achieved.

According to the Amnesty international in one of its numerous reports, it states that,

"Execution is the ultimate, irrevocable punishment: the risk of executing an innocent person can never be eliminated" …

Furthermore, there have been several incidents of wrongful deaths in the cause of carrying out the death penalty procedure. The death penalty as it were, is not in reality a solution to stopping crimes or discouraging people from committing crimes. Rather, it is itself a crime by the State, violating the right to life of its own citizens. The continuous arguments of States who still operate the Death Penalty has a retributive justice, has been that, it is to put fear of crime in the hearts of its citizenry and see the deaths of others as a lesson; unfortunately, crimes are still on the rise in the world at large, especially from countries who claim that the death penalty is a means of quenching the fire of crime in the hearts of its people. It is important to take note that, death penalty as a procedure of "legal punishment" which "could" be recognised by law, takes various forms. Often than not, under the military regime in Nigeria, the death penalty was in the form of Shooting, that is, death by firing squad, hanging and or stoning.

It is important to bear in mind by the reader of this academic piece, that Nigeria operates two different legal systems, one being the English legal system and the other, the Customary legal system. Therefore, it is under the customary legal system, that there is an Islamic sharia law, which makes provision for stoning to death as a form of death penalty. Generally speaking, the Islamic Sharia law has not yet been passed to law in the Southern part of Nigeria, it is only effective in some Northern States in Nigeria. As the moment of writing this academic research, the Nigerian House of Assembly is currently deliberating on making the Sharia law effective in both Northern and Southern parts of the country. The following acts, are offences which might result to death penalty under the Nigerian legal system, crime of murder, robbery, rape, kidnapping, terrorism and other terrorism related offences, mutiny, and treason.

For instance, the death punishment of stoning, that is, stoning to death of an offender or a criminal, is whereby a group of people throw stones at such person till the person dies. It

is important to bear in mind that while this act of stoning is being carried out by several people, not a single person out those stoning the criminal or offender to death can be held liable for murder or other likely offences. Furthermore, the death penalty in recent times in Nigeria takes the form of hanging[35]. Orchia Blessing in her work described the procedure in which the death penalty through the means of death by hanging takes place;

> "The procedure for execution by hanging is as follows; prior to any execution, inmate may be weighed the day before the execution, a rehearsal is done using a sandbag of the same weight as the prisoner. This is to determine the length of "drop" necessary to ensure a quick death. If the rope is too long, the inmate may be decapitated, and if it's too short, the strangulation can take as long as 45 minutes. The rope which should be ¾ inch to ¼ inch in diameter must be boiled and stretched to eliminate spring or coiling. The knot is lubricated knot is lubricated to with wax or soap to ensure a smooth sliding action.
>
> Immediately before the execution, the prisoners' hands and legs are secured, he is blindfolded, the noose is placed around the neck, with the knot behind the left ear, the execution takes place when a tap door is opened a prisoner falls through. The prisoners' weight causes a rapid fracture dislocation of the neck; however, instant death hardly occurs."[36]

In one of the reports of Amnesty International, it made a call for absolute abolition of death penalty in Nigeria, and in other parts of the world, because of the high increase in execution and for the fact that it totally amounts to gross disrespect and violation of right to human life. In a 2015 publication of This Day newspaper in Nigeria, the Amnesty International Director who is the head of Amnesty International in Nigeria in one of his media briefing categorically said that, Nigeria is among the 58 retentionist countries in the world, who has created a constitutional support still for the death penalty. He further advocated that, the death penalty which is recognised by the Nigerian constitution should be expunged from the constitution and our legal system entirely. In one of the recent reports and findings, This Day Newspaper proved the further gross violation of right to life by the

[35] Section 37 (2) and 376 of Criminal Procedure Act, Cap 43 Laws of the Federation of Nigeria 1958 AND Section 273 of the Criminal Procedure Code, Cap 20 Laws of Northern Nigeria, 1959

[36] ORCHIA BLESSING IVEREN, "Justification for and the abolition of capital punishment under human rights law" April, 2011 (Unpublished Undergraduate Academic Thesis)

Nigerian government, when it secured a priceless information from Mr. Thankgod Ebose[37], one who was a victim of death row for 27 years, and he gave several accounts of how secret killings are carried out in Nigerian Prisons. The case of Mr Thankgod Ebose, happens to be of great act of courage and humanitarian service, it was a result of the quick intervention of the Amnesty International that allowed My Thankgod Ebose to have got his freedom.

In a 2008 report by the Amnesty International on death penalty and the challenges been faced by the inmates in Nigeria, it stated that, Nigeria had almost a thousand prisoners that were already condemned to face death. In addition, it further stated that around the number of a hundred and thirty prisoners had been on death row for approximately ten years, while some had been there for over thirty years or far more. Unfortunately, most of the prisoners who had spent longer years waiting to be killed were later diagnosed for various ailments, and mostly they all suffered from psychological trauma (mental illness). In the words of the United Nations Secretary General, Ban-Ki- Moon on 10th October 2014, he thus quoted,

"We must continue to argue strongly that the death penalty is unjust and incompatible with fundamental human rights".

According to 2014 report on death penalty, the Amnesty International provided the report that, Nigeria had a total of six hundred and fifty-nine (659) death sentence cases; even though no execution was carried out in Nigeria in the year 2014. The report is quoted below;

"According to information received from the Nigerian Prisons Service: 589 people were sentenced to death; 49 death sentences were commuted; 69 pardons were granted; 32 death row prisoners were exonerated; and five foreign nationals were on death row in 2014. The number of death sentences reported by the Nigerian Prisons Services does not include those imposed on 70 soldiers by the Nigerian Military courts during the year. Therefore, inclusive of the soldiers, a total of 659 people were sentenced to death in 2014. At least 1,484 people were under sentence of death at the end of the year. Most death sentences imposed are for murder and armed robbery".[38]

Furthermore, in light of the framework in which this academic research is being written, it is important to also make reference to the fifty-four (54) soldiers who were sentenced to death by the Nigerian Military Court, under the past government of Former

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[37] http://www.thisdaylive.com/index.php/2016/04/06/ai-calls-for-abolition-of-death-sentence-in-nigeria-as-global-execution-witnesses-50-increase/ accessed on 14th June 2016 http://www.aljazeera.com/indepth/features/2013/11/waiting-endlessly-nigeria-death-row-201311209442010674l.html

[38] Death Sentences and Executions Report in 2014, by Amnesty International.

President Goodluck Ebele Jonathan (GCFR). Based on Article 6 (2) of the International Covenant on Civil and Political Rights, in which Nigeria is a State party to, the Article 6 (2) categorically stipulates that,

"In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court."

In relation to the above quoted provision of an international instrument, the lives of fifty-four innocent citizens, furthermore not ordinary citizens, but men of military service, who put their lives as a collateral for defending the territory and sovereignty of the Nigerian government, would have ended up being terminated by the death penalty sentence given by the Nigerian Military Court. The Amnesty International report on Death Penalty and Execution that year, being 2014, further reported as follows that;

"During the year Nigerian military courts imposed mass death sentences. In September, 12 soldiers were sentenced to death for mutiny and attempted murder after firing shots at their commanding officer in the north-eastern city of Maiduguri in May. The convicted soldiers belonged to the Nigerian Army's Seventh Division, which is at the forefront of the fight against the armed group Boko Haram. In December, a military court in Abuja imposed death sentences on 54 soldiers who were convicted of conspiracy to mutiny and mutiny for refusing to join operations to retake three towns in Borno State that had been captured by Boko Haram. According to testimony given by the soldiers during the trial, they had complained to their superiors about not having the weaponry needed to complete their mission against Boko Haram. The lawyer for the soldiers said that the military court had refused to consider the soldier's defence that they were improperly equipped. Halfway through the trial, journalists were prevented from covering the proceedings. Amnesty International is concerned that the trial may not have complied with internationally recognized standards for fair trial. In December the military court in Abuja sentenced four more soldiers, accused of mutiny, to death. All 58 soldiers belonged to the Nigerian Army's Seventh Division. Article 6(2) of the ICCPR, to which Nigeria is a party, stipulates that "sentence of death may be imposed only for the most serious crimes". Under international human rights standards, "most serious crimes" has been interpreted as being limited to crimes involving intentional killing. Since the charges against all the soldiers failed to meet the

threshold of "most serious crimes" the death sentences should not have been imposed and are in violation of international human rights law"[39].

The jurisprudential idea to be pursued clearly from the above scenario, is that, in situations whereby a State still practices the procedure of death penalty as a means of retributive justice through its arm of legal system; there is bound to be an abuse and of the death penalty procedure, whether erroneously, or by omission or intentionally. The death penalty procedure is a denial of the most important of all fundamental rights of man, which is the right to life. Death penalty as a type of justice or punishment under the law, whether by democratic or religious or customary or dictatorial or military; absolutely violates the most fundamental principle generally recognised by international law concerning human rights, which is that States must recognise the right to life. At this stage, it is important to bear in mind that the United Nations General Assembly has called for an end to the death penalty; and several human rights organizations have also approved the fact that, the continuous usage and implementation of the death penalty as a form of retributive justice which is enhanced by the law, breaches fundamental human rights customs and norms. It is also of importance to note that, the provisions of the Universal Declaration of Human Rights, as its name implies, is fashioned towards protecting the rights of peoples of the earth. In its provisions of Article 2 (UDHR)[40], it states that,

"Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty".

Flowing from the provisions of the Universal Declaration of Human Rights in its Article 2, which does not discriminate against any one, but rather embraces all peoples of the earth, it further establishes in its Article 3, the most fundamental right, which is the right to life. It states as thus;

"Everyone has the right to life..."[41]

There is a general perspective to which certain legal proponents have towards the death penalty; and it is that, there are some needs in the society which would warrant other

[39] INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS Documents
[40] http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf Accessed on 15th June 2016
[41] UNIVERSAL DECLARATION OF HUMAN RIGHTS Document

means of seeking justice and cleansing the society through the execution of anyone guilt of a decree or law or generally, criminals. Some proponents of the death penalty are mostly of the opinion that the only lasting solution to certain crimes is the killing of such perpetrator of these crime(s).[42] These proponents of the death penalty are not in actuality concerned with the modus operandi in which the death penalty is carried out or where. They are not in any way concerned if the death penalty is implemented in the public eyes (like it was done under the regime of General Buhari and Idiagbon regime of 1984) or if hidden and implemented behind the high walls of prison. In an article issued by the Global Journal of Human-Social Science, which was written by Wole Iyaniwura, he clearly stated as follows;

"First, it cannot justify the violation of fundamental human rights, torture cannot be justified by arguing that in some situation it might be useful. International law has clearly demonstrated that a cruel in human or degrading, punishment is always prohibited, even in the time of the gravest public emergency. It has been established that despite centuries of experience with death penalty and many scientific studies of the relationship between the penalty and crime rates there is no convincing evidence that it is uniquely able to protect society from crime or to meet the demands of justice. In many ways it does the opposite. There is a serious moral problem with death penalty. The criminal in the case of murder kills somebody while the rest of us uses the collective will of the state to kill him. In certain instances, we are faced with problem..."[43]

Furthermore, the procedure of death penalty in Nigeria has got its constitutionality source, thereby, in other for it to be repealed, there would need to be an amendment of the Nigerian Constitution (1999). Under the Nigerian Constitution (1999) in its Chapter IV, Section 33 (1), it states as follows;

"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".[44]

The Nigerian constitution also provides for exceptions in which the right to life can be lost in its Section 33 (2) as follows;

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[42] J.O. Akande, "A Decade of Human Rights' Nigeria Institute of Advanced Legal Studies Law Series (NIALS) P.10 at P.104

[43] Wole Iyaniwura, GLOBAL JOURNAL OF HUMAN-SOCIAL SCIENCE (E) ECONOMICS Vol 14 Issue 4 Version1.0, 2014, Online ISSN: 2249-460X

[44] CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (1999) As Amended; See also, http://www.parliament.am/library/sahmanadrutyunner/nigeria.pdf Accessed on 15th June 2016

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

(a) For the defence of any person from unlawful violence or for the defence of property:

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) For the purpose of suppressing a riot, insurrection or mutiny."

It is important to note that, the above quoted constitutional provisions, does not in any way set aside the prisoners or convicts from enjoying the provisions as they are written. Prisoners are not excluded from benefitting from the protection of their right to life as given by the Nigerian constitution. In a judicial decision, it was held that even a prisoner who had already been sentenced to death, but appealed the death sentence still had his right to life. In addition, the court stated that the prisoner's right to life was breached when the Oyo State Military government ordered his execution while he had his appeal pending at the Supreme Court.[45]

The right to life is an expression that best defines the overall importance of human existence and the sacred meaning that springs forth from the meaning of living. So far in this academic research, there has been a balance not to delve into the argument of whether there should be stricto-senso continuum of death penalty or not. Rather, this academic research has shown the violation of right to life in the use of death penalty as a retributive justice. It is undisputable that, the right to life is that of a universal principle with sacredness and sanctity, because of its broad derivation as to human existence. Under the umbrella of the International law as noted above in previous paragraphs in this academic research, the international law sphere, operates in line with the modern concept of Globalization, and as such, encourages all States to adjust their laws and governmental mechanisms to the exigencies of modern civilization and realities of law. In line with the provisions of Article 4 of the African Charter on Human and Peoples' Rights[46];

"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."

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[45] Bello vs Attorney General of Oyo State (1986) 5 NWLR 828;

[46] African Charter on Human and Peoples' Rights (1986); See Also, http://www.achpr.org/instruments/achpr/ Accessed on 15th June 2016

It is important to bear in mind that, when a person's right to life is terminated or about to be violated, all his other rights would amount to no use. This is because, without life, there is no human needs and wants. Basically, all other fundamental human rights are cut out of the need to survive for man, as long as such human has life in him or her; but if in a case whereby his or her life is ended or about to be ended, there is in reality, no other right to be protected as at that moment of ending his or her life. So, this is why the right to life is the mother of all rights in hierarchy of importance. In a published text titled "Key Issues in Nigerian Constitutional Law", it was clearly stated that," the right to life is the first generational right, and that the right to life is the mother of all rights known to mankind; and the text further indicates that the right to life is an inalienable right and individuals lack the ability to forfeit it".[47]

In conclusion, the death of the convict does not add anything to the family of the deceased or the deceased person. Paying back life for life involves that the State degenerates to the level of the capital offender in other to inflict the capital punishment. The convict is not irredeemable. The sanctity of human right to life has to be respected and valued. The State must be encouraged to amend its laws and repeal the laws upholding the death penalty. This is not because of debating whether it is right or wrong to use death penalty as a form of retributive justice; rather it is because it violates a universal principle of right to life irrespective of anyone.

## 2.2 DEATH THREATS, POLICE BRUTALITY AND DEATH IN POLICE CUSTODY:

It would not be explanatory enough to explain death threats alone under the discuss of right to life, using the Nigerian scenario, without linking the sub topic of death threats and police brutality. The author of this academic research, would like its readers to separate their conscious minds from the above discussed sub topic of death penalty from the "about-to-be" discussed sub topics of death threats and police brutality.

Firstly, in defining what a death threat is, a death threat can be defined as that heinous act of perverting justice (often in most cases) by one person or more than one person, issuing statements, gestures or other means of communication to another person, suggesting to the other party being intimidated, that his or her life may be terminated if he or she goes ahead with a particular plan (often in most cases are matters of investigation, giving evidence in

[47] J. NNAMDI ADUBA & SAM OGUCHE, "Key Issues in Nigerian Constitutional Law" published in 2014; See also, a review of the book on http://thenationonlineng.net/right-to-life-as-mother-of-all-rights/ Accessed on 15th June 2016

court of law, politics and etc.). There are several means by which a death threat can be carried out. These methods are by hand-written or typed letters, telephone calls (this is mostly common in Nigeria, especially if the death threat has to do with business or political ties), emails or any other means known or unknown to human laws (there have been reported cases of death threats in metaphysical forms in Nigeria to the police, but were never treated as official due to the fact that the Nigerian laws are not familiar with existence of metaphysical operations by humans).

A death threat to a head of state or President in Nigeria would amount to treason, which would result in death penalty for such person who makes such death threat. But in this situation, this academic research is poised to look at the perspective of death threats in violating the right to life of people and also the police brutality faced by many people, especially during the military era in Nigeria. Human life is sacred, and as such, is widely considered a soft spot under international and domestic laws. So therefore, in several jurisdictions, an intentional termination of human life without a good source within the ambit of a law to support such act by another human being, will be largely considered a grievous offence of murder. In addition, the common law in its emerging form had constructed the view that such an act of killing another human being was a serious act, with little or no room for an excusable ground. But except in few circumstances where such act of killing would be exempted. However, the very fact which might warrant the death of another human being is already an imputable crime even where one did not intend or foresee death as the result of one's conduct; although it was subsequently that there was a growth in common law for distinction between a lawful and unlawful homicide.

But be that as it may, this academic research is not focusing on homicide, but never the less, the legal discuss of right to life under the scope of death threats, would not find a good footing, if such template above is not laid. So therefore, it is important to bear in mind that, there are domestic proviso under the Nigerian laws as well which make room for act of death threats as a criminal offence. Death threats as earlier defined are issued, so as to intimidate the victim(s) into manipulating their actions towards an event in a coercive manner. Note further that, each State under international law, has its own criminal codes[48]; and it varies. It is an offence to intentionally utter or convey a death threat to any person under the Nigerian legal system;

[48] Criminal Code Act Chapter 27 Section 323 (Written threats to murder) Laws of the Federation of Nigeria 1990; See Also, http://www.nigeria-law.org/Criminal%20Code%20Act-Tables.htm Accessed on 16th June 2016

"Any person who, knowing the contents thereof, directly or indirectly causes any person to receive any writing threatening to kill any person is guilty of a felony, and is liable to imprisonment for seven years".[49]

Furthermore, in the Nigerian scenario, mostly, death threats are as a result of politics or business engagements or at times even in civil causes (marriage). In the corruption trial involving a former governor of Ogun State in Nigeria, that of Chief Gbenga Daniel, there was an instance whereby one of the key witnesses to testify against the former governor was sent several death threats. The High Court that was hearing the case ordered the Police to conduct professional investigations concerning the death threats that were made towards a principal witness during the corruption trial. As a matter of fact, the lead counsel then to the body fighting corruption in Nigeria, that is, the ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) had earlier raised an awareness to the Court concerning the death threats that were sent to the witness through mobile text messages.[50]

In another case of matrimonial causes, as reported by Information Nigeria, was the case of one 32-year-old man, Aliu Olagunju, who pleaded with the Agege Customary Court to dissolve his eleven years old marriage with his wife due to alleged threat to his life.[51] In Nigeria, issuing a death threat to another person is considered a criminal offence as quoted above, and there are laid down provisions of the law that deal with such occurrence. Below quoted, is a short excerpt of a death threat report by Research Directorate, Immigration and Refugee Board of Canada, concerning a death threat allegation and report in Nigeria:

"*Post Express* reported on 14 January 1998 that two persons were arraigned before an Ikeja Chief Magistrate Court on a two-count charge of "conspiracy and threat to life." The charges read, in part, that the two 'did conspire together and directly or indirectly to write a letter to Momoh [a London-based industrialist and businessman] threatening to kill him,' an offence punishable under section 323 of the criminal code, cap 31 Vol. 2, of the laws of Lagos State... There are reports of police, or security agents, investigating death threats (IRIN 28 Oct. 1999; *Post Express* 30 Oct. 1998). In reporting on an attack on a Nigerian singer and musician, *Post Express* wrote that he had previously been sent an extortion letter and that police were in possession of the letter and had arrested about five youths (ibid.). Threats to foreign pilots working for Nigerian airlines, made by an unknown group called the

[49] Ibid.

[50] As reported by PREMIUM TIMES Newspaper June 2012, http://www.premiumtimesng.com/news/5835-gbenga-daniel-corruption-trial-court-orders-probe-of-death-threat-to-witness.html Accessed on 16th June 2016; See also the case of Ozaki & Ors vs The State Suit No 130/1988

[51] Reported by Information Nigeria on 13th April 2013 http://www.informationng.com/2016/04/man-seeks-divorce-of-11-year-old-marriage-over-death-threats.html Accessed on 16th June 2016

Unemployed Pilots Association of Nigeria (UPAN), were being investigated by security agents (IRIN 28 Oct. 1999). There are also several reports of persons reporting to police instances in which their lives have been threatened by others (PANA 3 June 2000; *Post Express* 1 Aug. 1999; ibid. 23 May 2000). *Post Express* also reported that persons had called for police to take action on death threats they had received (*Post Express* 21 June 2000; ibid. 27 Apr. 2000; ibid. 20 Jan. 2000). *Post Express* provided the story of a businessman who had received repeated threats, including letters, from persons attempting to extort money (29 Mar. 1999). According to this newspaper the businessman said, it was when he could no longer endure these threats that he approached the Commissioner of Police-in-charge of Mobile Police Unit at the Force headquarters annex, Lagos for assistance. The Commissioner, said he advised him to go back to either the Okota Police Station or the Ago-Place-Way Police Post to apply officially for police protection. But as time was running out and both the police station and post were not forthcoming, he went back to the Mopol Commissioner who "directed a unit commander to temporarily provide me with security. *Tempo* reported an instance in which a representative of the Oodua People's Congress (OPC) directly threatened police; no action appeared to have been taken: Kwara State coordinator of the group, Alhaji Oloola Kasum, warned the police of dire consequences should [Ganiyu] Adams be arrested.Kasum's threat was direct. He was quoted by a national daily as saying: "Quote me anywhere. Anybody who attempts to arrest Adams and thereafter put him to trial will die before him (28 Jan. 2000). There is also a report of the investigation of a death threat being passed on to authorities other than police or security agents. According to a *Post Express* article on the death of a beer parlour proprietress believed to be in a dispute with her landlord, "after complaints of threats on her life to the police, she was advised to report the case to the Public Complaints Commission because the land in question belonged to the Nigerian Railway Corporation. When the commission received the complaint, it asked the landlord to appear before it but he allegedly ignored the order" (15 July 1997) ..."[52]

Now, while it is very much necessary to bear in mind that, the role of the Police Force in any country is to provide safety and security to lives and properties of citizens living in the country. Nonetheless, with core usage of due process of law, it is very unlikely for any true investigation to be carried out without any intervention by the police. Often times than not, most cases of police brutality and death in police custody, are covered up by the government. In most cases, families of such victims are silenced with intimidation and or with influence of

[52] http://www.refworld.org/docid/3ae6ad6834.html Accessed on 17th June 2016

monetary compensation. According to the United Nations international instrument concerning Law enforcement agents which reads thus;

"Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against imminent threat of death or serious injury, to prevent the perpetration of a particular serious crime involving grave threat to life; to arrest a person presenting such a danger and resisting their authority or to prevent his or her escape and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life".[53]

According to the role of police as described by John Alderson, the Police who happen to be law enforcement agents are responsible for executing these laws which are formulated in other to promote the common interest of all, which is safety and security. Furthermore, in his words according to John Alderson, it is expected of the Police to do the following in a democratic society;

"Contribute towards liberty, equality and fraternity... help reconcile freedom with security and to uphold the rule of law... facilitate human dignity through upholding and protecting human rights and pursuit of happiness... provide leadership and participation in dispelling crimogenic social conditions... contribute towards the creation or reinforcement of trust in communities... strengthen the security of persons and property and the feeling of security of persons... investigate, detect and activate the prosecution of offences, within the rule of law... facilitate free passage and movement on highways and roads and on streets and avenues open to public passage ... curb public disorder... deal with major and minor crises and to help and advice those in distress, where necessary activating other agencies..."[54]

But, the circumstantial disparity, in matters of police brutality, typically shows that the Police Force in Nigeria, is functioning not at the expense of its original needs, but to mere serve a very few (mostly those in government) at the expense of others[55]. In line with the published analysis of Institute for the study of Labor and Economic Crises of the United States Police of San Francisco, it argued that in certain democratic, but capitalistic societies,

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[53] Principle 9, United Nations' Basic Principles on the Use of Force and Firearms by law Enforcement Officials. Adopted by the Eight United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

[54] JohnAlderson, Policing Freedom London: Macdonald and Evans, p.xi 1979

[55] Institute for the Study of Labor and Economic Crises (1982) The Iron Fist and the Velvet Glove: An Analysis of the US Police (San Francisco, CA: Crime and Social Justice Associates) p.12

"the main function of the police has been to protect the property and well-being of those who benefit most from an economy..."[56]

According to E.E.O Alemika, he established that, "Police work embodies ironies... police are instrument of oppression and exploitation...yet they are essential to the preservation of justice and democracy... the police are guardians of social order.[57]

But in another academic research of Etannibi E.O. Alemika and Innocent C. Chukuma, it was argued that, perhaps 'the most valid way to explain the police characteristics or behavioural pattern is at times to also take a look at the social and political climax upon which that which influences the police behaviour is settled. But in the Nigerian case, this happens to be the seventh republic, a democratic era as a matter of fact; yet, there is practically no difference in occurrence of police brutality in the military era and the democratic era. In a 19th September 2014 report issued by the Amnesty International Nigeria, on the pages of a newspaper reads thus;

"Although Nigeria prohibits torture of suspects and has signed several international human rights protocols banning the act, its security agencies still continue to use the crude means on suspects. Amnesty International, in a report released..." [58]

There have been cases of extra-judicial killings by the Nigerian Police Force, which shows little or no respect for human life in Nigeria. There was another report on the dailies of a Nigerian newspaper where it was then widely reported that the Nigerian police killed an allegedly innocent young man and later on planted evidence on his corpse, in other to call him an escapee armed robber that was shut down.[59] According to the news report written by Ikechukwu Ikeji, which gave three different instances of extra-judicial killings by the police force of Nigeria;

"Extra judicial killing simply means the murder of a suspected criminal usually by a governmental agency without trial in a law court. The peculiarity of the situation is the impunity with which it is done. One was perplexed by the reaction of the Lagos Commissioner of Police (CP) Umar Manko to the shooting of the okada rider in Ikorodu, Lagos. Instead of expressing or showing remorse at the loss of innocent life, the CP chose to warn that the Traffic Law in Lagos was still in force. His face showed anything but remorse

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[56] Ibid.

[57] E.E.O Alemika (1993) "Criminology, Criminal Justice and Philosophy of Policing" in T.N. Tamuno; I.L Bashir; E.E.O Alemika, and A.O Akano (Eds.) Policing Nigeria (Lagos: Malthouse Press) P.59

[58] News report by ABUSIDIQU Dailies on 19th September, 2014; See also, http://abusidiqu.com/nigerias-torture-chambers-horrific-tales-of-survivors-of-police-brutality/ Accessed on 17th June 2016.

[59] News report by THE NATIONS Newspaper on 27th August, 2013; See Also, http://thenationonlineng.net/extrajudicial-killing-and-police-brutality-the-way-out/ Accessed 17th June 2016.

for the loss of innocent life. Examples abound of extrajudicial killings in Nigeria. Nigeria lost Dele Udoh, an athlete to extra judicial killing in the mid-80s. Recently, the Police killed some students of the University of Uyo and in the process of going to investigate the matter, about 5 members of the executive of National Association of Nigerian Students died in a ghastly motor accident. We remember the Apo 6 who were gruesomely murdered in Abuja and the trial is headed nowhere presently. On September 20, last year, 36-year-old Ugochukwu Ozuah, was shot and killed unlawfully, according to eyewitnesses, by a policeman five days after his wedding along the Gbagada Expressway in Lagos after dropping off a classmate at the junction. The escalation of the violence in the north of Nigeria perpetrated by boko haram today is linked with the extra judicial killing of the leader of the group, Mohammed Yusuf".[60]

There are also instance of deaths in police custody which are been currently investigated as at the moment in Nigeria. There was a report of one David Ekpo, a banker with ine if the few leading Banks in Nigeria was arrested and tortured till he died, due to severe torture by the Nigerian Police Force.[61] In another report this year, was a controversial issue as to how a student of Federal University of Technology Minna, lost his life to the Nigerian Police while in their custody.[62]

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[60] Ibid, See also, http://www.nigeriapolicewatch.com/tag/police-brutality/ ; http://www.nigeriavillagesquare.com/articles/nigeria-police-force-%E2%80%93-a-legacy-of-brutality.html Accessed on 17th June 2016

[61] https://www.naij.com/60000.html Accessed on 17th June 2016

[62] News reported by Leadership Newspaper on 1st of April 2016; See Also, http://leadership.ng/news/514082/controversy-rises-death-fut-student-police-custody Accessed on 17th June 2016 ; See also the report of one Gafar Ayoola who was tortured to death by a policeman on 29th April 2016 as reported by NATIONAL MIRROR NEWSPAPER on its website, http://nationalmirroronline.net/new/family-petitions-aig-over-sons-death-in-police-custody/ Accessed on 17th June 2016.

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See also the report of one Gafar Ayoola who was tortured to death by a policeman on 29th April 2016 as reported by NATIONAL MIRROR NEWSPAPER on its website, http://nationalmirroronline.net/new/family-petitions-aig-over-sons-death-in-police-custody/ Accessed on 17th June 2016.

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# CHAPTER THREE

## EXAMINING ABORTION, HOMOSEXUALITY AND EUTHANASIA UNDER THE SCOPE OF RIGHT TO LIFE.

### 3.O INTRODUCTION:

Abortion has been one of the most boiling legal issues over the past centuries. It is a thematic line which has pre-occupied the moralist and philosophical jurisprudence of international law and several domestic laws.[63] Abortion has received several international awareness as a progressive discuss on its acceptance or rejection. It has been subjected to debate whether it should be legalized or rejected. Abortion at the moment in the global scope has transcended beyond the horizon of morality and religion. It has gone way beyond the cultural perspective of good or bad, right or wrong. It is currently within the scope of subjection to legality or whether it should remain as an illegal act.

In the last twentieth century, the topic of abortion, was ruled by the leitmotif of morality, religion and social norm (which is otherwise known as culture). Abortion was influenced largely by religion in Africa, especially in Nigeria, being the home to the most populous and religious Black Nation on earth. The argument of moralists and religionists as at the against the concept of legality of abortion, evolved largely into the neo-anti abortionist crusade movement globally[64]. A typical example of such issue was discovered in the literary contribution of Judith Jarvis Thomas, in her publication.[65] Judith Jarvis Thomas was not an anti-abortionist, rather, she was a pro-abortionist, in the philosophical path of "permissibility of induced abortion". In her work titled, "A Defense of Abortion", she was of the opinion that a foetus could lose its right to life if the safety of the woman's body or health or life is in any way threatened by death as well.[66] She is quoted as follows:

"You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. [If he is

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[63] Mary Anne Warren, "On the Moral and Legal Status of Abortion," The Monist, Vol. 57, no.4, 1973. Reprinted in James P. Sterba, op. cit., pp. 159-168.
[64] John Noonan, "Responding to Person: Methods of Moral Argument in Debate over Abortion," Theology Digest, 1973, pp. 291-307. Reprinted in James P. Sterba, op. cit., pp. 149-159.
[65] Judith Jarvis Thomas, "A Defense of Abortion", published in 1971.
[66] Ibid, pp-52-53

unplugged from you now, he will die; but] in nine months he will have recovered from his ailment, and can safely be unplugged from you".[67]

## 3.1 BODY OF ANALYSIS:

Abortion remains one of the most fascinating issues being currently debated as earlier noted in the introduction of this academic research. It remains one of the most legal tussles ever to be in the current academic and practical spheres of international law. It is basically divided into the pro-life and the pro-abortionists' groups. As earlier noted, the purport of arguments against the act and legalization of abortion is due to the loss of life of the foetus involved, and as such, the pro-life came up with the argument that even the unborn child has a right to life as very well as the already existing mother who is carrying the foetus. While the pro-abortionists' have argued also about the right to life of the mother carrying the foetus. The pro-abortionists' have largely argued about the need to recognise that even mothers or pregnant women as well, also have the right to terminate any pregnancy in circumstances where their life is also threatened especially, when faced with death or permanent loss of a body function or organ in the pregnant women. It is important to note that, earlier in the past centuries, the issue of abortion was more of independent domestic issues of each States. But currently, especially from the last forty years of the past twentieth century, the world has come under the loud debate of whether abortion should be permitted or not.

However, it is important to bear in mind that, abortion as it were, cannot exist independently or solely, outside the box of substantive argument of right to life. Perhaps in a broader sense of clarity, this academic research wishes to point out that, abortion, no matter where argued from, whether from the pro-life (that is the anti-abortionists) or the pro-abortionists group point of view, both groups have sourced the strength of their arguments from the concept of right to life[68]. In addition, the "pro-life group have emphasized the argument of preserving human life since conception at any cost, even to the point of giving absolute priority to the life of the foetus over the life of the mother.[69] But the pro-abortionists' have clearly avowed that the woman, that is the pregnant woman should own the right of control on her body to the point of having a total control even over natural

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[67] Judith Jarvis Thomas, pp48-49; See Also, D. BOONIN, "A Defense of Abortion" published by Cambridge University Press, Chapter 4

[68] Jane English, "Abortion and the Concept of a Person," Canadian Journal of Philosophy, Vol. 5, no.2, pp. 233-243, 1975. Reprinted in James P. Sterba, *op. cit., pp. 170-176.*

[69] MARIAN HILLAR "Philosophers and the Issue of Abortion" Published in Essays in the Philosophy of Humanism (1997) (THE ARTICLE was adapted from a talk given on October 19 1996 at the 'Ethics 96', University Humanist Conference, at University of Houston Central Campus, as part of a forum entitled "Are Traditional Moral Standards Inadequate for Modern Medical Practice").

phenomenon of development of a new being; especially when it touches her own survival as well.[70]

Abortion is a crime in Nigeria currently. There is a very limited legislation on the act of abortion[71]. It is commonly publicised in Nigeria by international organisations and private persons, for the legislative arm to have more awareness about formulating further laws concerning abortion. But quite unfortunately, it has so far received little laws. Perhaps this is not farfetched because the procedure for amending and or repealing laws in Nigeria is slow and very tiring. The act of abortion in Nigeria is illegal and has the jail sentence of up to 14 years' imprisonment, but with the exception that, if the act of abortion was carried out in other to save the life of the pregnant woman.

The controversy as to whether abortion should be legalized in Nigeria has been long and protracted. As earlier on noted, it is not unconnected with the fact that the issues that border on life are always sensitive for society and all the more for the legislature and the courts. But as noted above, the pro-abortionists' still believe that the pregnant woman should be left with the choice of deciding about the matter of her life, health and choice of keeping the pregnancy or not. More importantly to note is that, due to the illegality surrounding the act of abortion in Nigeria, many women result to having unsafe, unethical and undue abortion methods, which mostly results in high mortality and morbidity rates in Nigeria.

Bear in mind, that the GUTTMACHER INSTITUTE in one of its Journals had conducted a research stating that, "An estimated 1.25 million induced abortions occurred in Nigeria in 2012, equivalent to a rate of 33 abortions per 1,000 women aged 15–49. The estimated unintended pregnancy rate was 59 per 1,000 women aged 15–49. Fifty-six percent of unintended pregnancies were resolved by abortion. About 212,000 women were treated for complications of unsafe abortion, representing a treatment rate of 5.6 per 1,000 women of reproductive age, and an additional 285,000 experienced serious health consequences but did not receive the treatment they needed".[72] It was also reported that the level of unintended pregnancy and unsafe abortion is still continuing in Nigeria. Moreover, there was a conclusion in the report that, perhaps if permitted by law in Nigeria, and there is room for improvements in access to contraceptive services, provision of safe abortion and post-

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[70] Judith Jarvis Thomas, "A Defense of Abortion", Philosophy & Public Affairs, No.1, (Printed in 1971), reprinted in James P. Sterba, ed. Morality in Practice, Second Edition, (Belmont, CA: Wadsworth Publishing Company,1988) pp 140-148

[71] CONSTITUTION of the federal republic of Nigeria 1999; The Criminal Code Act and the PENAL Code Act.

[72] GUTTMACHER INSTITUTE, "THE INCIDENCE OF ABORTION IN NIGERIA" Published in International perspectives on sexual and reproductive health, Vol 41, Issue 4, December 2015 pp 170-181.

abortion care services, that there may be reduction in maternal morbidity and mortality.[7374] Furthermore, in another research conducted by Guttmacher Institute, an estimated number of four hundred and fifty-six thousand (456,000) unsafe abortions are done yearly in Nigeria. In addition, there was also a joint research conducted by Society of Gynecologists and Obstetricians of Nigeria and Nigeria's Ministry of Health, which reported that, women who are involved in the act of abortion were around twenty thousand (20,000) each per year.[75]

In analyzing how effective both groups arguments might seem, the question is, whether there is an objective ground for a just law on abortion? In other words, the question being asked here is whether, there is a just ground to establish a law permitting abortion or refuting abortion? Since the argument for abortion or against abortion is on the premise of "Right of Life"; it is further mandatory to look into which argument has a more founded foot in the right to life. Is it the case that the life and health of the mother is of greater value than the life of the Foetus? In a sharp contrast, there will be a comparism between two distinct European cases on right to life of an unborn child. In the Irish case of G Vs An Bord Uachtala[76], Walsj J explicitly stated his recognition of an unborn child's right to life; which ought to be guarded against all threats to the existence of his or her birth (before or after). Walsh J stated in his words as follows;

"The right to life necessarily implies the right to be born, the right to preserve and defend (and to have preserved and defended) that life, and the right to maintain that life at a proper human standard in matters of food, clothing and habitation".

Whereas, in the English case of Paton Vs British Pregnancy Advisory Service Trustees[77], the court affirmed as follows;

"...the foetus cannot in English Law have a right of its own at least until it is born and has separate existence from its mother..."[78]

Note further that, when the English case' decision was brought before the European Commission on Human Rights, the Commission ruled in line with Article 2 of the European Commission of Human Rights which says everyone's right to life shall be protected by law,

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[73] Irehobhude O. Iyioha AND Remigius N. Nwabueze, "Comparative Health Law and Policy: Critical Perspectives on Nigerian and Global Health Law, published by ASHGATE Publishing Ltd.
[74] Guttmacher Institute, Journal on International Perspectives on Sexual and Reproductive Health, published in the year 2015.
[75] Rachael Ogbu, "Illegal abortion in Nigeria: The cringing reality" (2013); See also, ABIODUN RAUFU, "Unsafe abortions cause 20,000 deaths a year in Nigeria" (This piece was published by National Centre for Biotechnology Information in 2015)
[76] (1980) I.R. 32
[77] (1979) QB 276; (1978) 2 ALLER 987 (QBD)
[78] Ibid.

and concluded thus thereafter that the word "everyone" applied merely to post-natal and not pre-natal.[79] Also, in considering the position of the pro-abortionists' concept in line with their understanding of right to life, the English Law case of R v Bourne[80] established that, the psychological inconvenience of the pregnant woman can lead to a lawful removal of the foetus (abortion). In this case for instance, it was directly laid as a principle that "preserving the life of the mother extended beyond acts to save her physical existence to ensuring her psychological balance".[81] So, it meant that in trying to preserve the right to life of the mother, under which her integrity and dignity comes, such mother if she feels that her right to life, and also "good-life" at that would be threatened as a result of the "unwanted-pregnancy" due to rape or incest or whatever reason, may wish to terminate the pregnancy or keep it.[82]

However, the pro-life have so far argued basically that, "there is no scientific doubt whatsoever that human life begins when the ovum of the mother and the sperm of the father unite, and at this point the whole genetic plan and code of such individual is commenced".[83] Categorically, the pro-life group have so far maintained the position on the quality of life, but yet on the sacredness as well. In fact, very high importance has been interpreted so far for the sacredness of life and the right to life. In the words of FAGOTHEY which reads thus,

"...the principle of respect for personal life and its integrity recognizes the preciousness of life which the sanctity of life position stresses."[84]

Now, in focusing on the constitutionality of life in Nigeria, it would be found out that, if considering section 33 of the constitution of Nigeria (1999), one would see the sensitivity in its proviso concerning the right to life, and one would see that the provisions of the right ot life are delicate; thereby making it glare that the right to life according to the view of Nigeria's constitution is pre-eminent. So, no one should be taken aback in seeing that the relevant statutes in relation to act of abortion in Nigeria are strict to anyone, including the woman from whom the foetus is about to be removed or have been removed.[85] As a matter of record, the proviso of the Criminal Code Act reads thus;

"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

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[79] See also, R Vs Collins and others Ex Parte (1998) The Times Newspaper on the 8th May.
[80] (1937) 1 KB 687
[81] A.S. OGWUCHE, Ed, "Compendium of Medical Law", (2006) pp 99
[82] J.J. Thomas, "A Defense of Abortion", in Philosophy of Public Affairs, cited by A. DANAGAN, "The Theory of Morality", (1977) pp 169.
[83] P. Mark, "Interview on Abortion" TOUCH MAGAZINE, No.95 July-November 1990 pp 16
[84] Fagothey, op.cit., pp 252
[85] Criminal Code Act (Sections 228-230, 297) AND Penal Code Act (Section 232).

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".[86]

In addition, it should be noted that, where a woman herself causes or attempts to cause her own miscarriage, whether by usage of force or poison or any medication or by any means possible, such a woman will be found guilty of a felony punishable by seven years' imprisonment[87]. But it should be noted also that this proviso lumps two distinct offences, that is, abortion as an act on its own and attempted abortion. But in the Penal code, which is in pari-materia with that of the Criminal Code, except that, the punishment for procuring abortion is fourteen years and that it allows therapeutic abortion if there is a good faith for the purpose of saving the life of the pregnant woman. But the Nigerian courts have followed the decision in the case of Rex v Bourne, in matter of therapeutic abortion, that is procuring a lawful abortion for the purpose of saving the life of the mother. So, Nigerian courts have upheld the practice which has allowed therapeutic abortion in order to save a woman's life or her physical and mental health.[88]

## 3.2 HOMOSEXUALITY:

Homosexuality in Nigeria has not been well received in Nigeria. It has so far been branded as an illegality in Nigeria based on moral, cultural and some religious influence. Historically, in the Nigerian past, the act of homosexuality is not being known to be a normal practice amidst divers tribes in Nigeria. Homosexuality according to 'US-LEGAL DICTIONARY' is explained below;

"The term homosexual means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, and includes the terms 'gay' and 'lesbian'. A homosexual act includes any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires; and any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in homosexual conduct".[89]

The Nigerian Law on homosexuality provides for a fourteen years' imprisonment for any homosexual acts, whether men or women[90]. In addition, a newly enacted law, by 7th January 2014 provides for prison sentences of ten years for Nigerians who might be found

[86] Section 228, Criminal Code Act, Laws of the Federation of Nigeria, 1990, cap 77
[87] Section229, Criminal Code Act
[88] W.O. Chukwudebelu & P.C. Nweke, "Abortion and the Law" in B.C Umerah, Ed., "Medical Practice and the Law in Nigeria" (1989).
[89] http://definitions.uslegal.com/h/homosexual/ Accessed on 20th June 2016
[90] Criminal Code Act, Chapter 77, Laws of Federation of Nigeria 1990

affiliated or belonging to any gay organization, supporting same-sex marriage or even engaged in display of same-sex affection in public. Whereas in the Northern states of Nigeria, where the Islamic Sharia Law is effective, homosexual activity is punished with Capital punishment for men, imprisonment or lashing for women. More importantly, the following states mentioned have adopted the Islamic Sharia Law and fully implement it; Bauchi, Kaduna, Gombe and Yobe States (adopted Sharia Law in the year 2001), while Borno, Jigawa, Kano, Katsina, Kebbi, Niger, Sokoto and Zamfara (adopted the Sharia Law in the year 2000). But so far, and according to the reports of Amnesty International, there has been no records of execution officially (that is, under the law) in Nigeria.

Furthermore, it should be noted that the Nigerian law on homosexuality acts concerning the Gay, Lesbian, Bisexual, Transgender and Intersexual persons is codified in the Chapter 77 of criminal code act as follows:

"Section 214. "Any person who

(1) has carnal knowledge of any person against the order of nature; or

(2) has carnal knowledge of an animal; or

(3) permits a male person to have carnal knowledge of him or her against the order of nature;

is guilty of a felony, and is liable to imprisonment for fourteen years.

Section 215. "Any person who attempts to commit any of the offences defined in the last preceding section is guilty of a felony, and is liable to imprisonment for seven years. The offender cannot be arrested without warrant."

Section 217. "Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years. The offender cannot be arrested without warrant."[91]

Nigeria does not accept same-sex marriages. By the year 2007, the Federal Executive Council approved the Same-Sex Marriage (Prohibition) Act 2006[92]. This law prohibits same sex marriages. It was due to international pressures, especially from America then, that forestalled the progress and effectiveness of that law. However, in the year 2008, the Same Gender Marriage Prohibition Bill came before the Nigerian Senate and was subsequently

[91] Ibid. Criminal Code Act
[92] SAME-SEX MARRIAGE (PROHIBITION) ACT 2006

passed in the year 2013. The reality is that Nigeria is a homophobic nation, and it was a result of this that even the bill did not meet much resistance or opposition from the people. Even though, there had been an existing law concerning the same-sex marriage, but the people neither went against the newly passed bill or questioned its arrival.[93]

In an excerpt from an online newspaper which quoted the then President, that is, Former President Goodluck Ebele Jonathan concerning his signing of the same-sex marriage goes thus;

"I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004. I assent," The assent note read. "The President has signed the Same Sex Marriage (Prohibition) Bill into law. This has foreclosed any pressure on President Jonathan not to assent to the bill. "We received inquiries from some foreign embassies on why the bill was signed into law. But we told them that our cultural values do not tolerate same sex marriage. "Also, we made it clear that since most Nigerians were opposed to the bill, the parliament acted in line with the wish of the majority. We are in a democratic setting; the President has no choice than to bow to the wish of the people. "These embassies were shocked but there is no going back. We hope they will also abide by the decision of Nigerians..."[94]

Furthermore, below is an excerpt of the same-sex prohibition act;

"A marriage contract or civil union entered into between persons of same sex:

(a) is prohibited in Nigeria; and

(b) shall not be recognized as entitled to the benefits of a valid marriage.

A marriage contract or civil union entered into between persons of same sex by virtue of a certificate issued by a foreign country is void in Nigeria, and any benefit accruing there-from by virtue of the certificate shall not be enforced by any court of law.

A marriage contract or civil union entered into between persons of same sex shall not be sole nixed in a church, mosque or any other place of worship of Nigeria.

No certificate issued to persons of same sex in a marriage or civil union shall be valid in Nigeria. Only a marriage contracted between a man and a woman shall be recognized as valid in Nigeria.

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[93] Adetoun Teslimat Adebanjo "Culture, Morality and the Law: Nigeria's Anti-Gay law in perspective. International Journal of Discrimination and the Law" Vol 15 published by December 2015.

[94] https://www.naij.com/56486.html Accessed on 20th June 2016

The registration of gay clubs, societies and organizations, their sustenance, processions and meetings is prohibited. The public show of same sex amorous relationship directly or indirectly is prohibited..."[95]

There is clearly no respect for choice of life in Nigeria. There is a vivid lacuna for sacredness of right to live the life of an individual's choice of sexuality. The United Nations has been working assiduously with member States to reject discrimination and criminalization based on homophobia and transphobia.[96]

## 3.3 EUTHANASIA:

Euthanasia, as a word, originates from Greece, which can be interpreted to mean good death.[97] According to Blacks' Law Dictionary, Euthanasia, (also referred to as Mercy killing) is:

"The act or practice of causing or hastening the death of a person who suffers from an incurable or terminal disease or condition especially a painful one, for reasons of mercy"[98]

The word euthanasia can be expanded into several classes[99] of its act. Euthanasia includes the active euthanasia (which is the process of giving something directly to cause death); there is passive euthanasia (which is the process of withholding a medical treatment or supportive measures in other to cause death); there is Voluntary euthanasia (which is the process of a person requesting for death); and there is also involuntary euthanasia (which is the situation whereby the death is not as a result of the patient's wish, but could be by honest family decision or fraudulent family or individual's decision).[100]

Euthanasia is otherwise known as "Assisted Suicide". In Nigeria for instance, there is a constitutional proviso which guarantees the right to life and there are other laws which frown at taking of that right or the life itself. And as such, there is no room for assisted suicide yet in Nigerian constitution, rather there are provisions of law which merely stipulates

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[95] Same-Sex (Prohibition) Act

[96] United Nations Office for the High Commissioner for Human Rights (OHCHR). (2011). *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation.* Geneva, Switzerland: United Nations. Retrieved from www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf SEE ALSO; United Nations. (2012). *Secretary-General SG/SM/14145 HRC/13.* Retrieved from www.un.org/News/Press/docs/2012/sgsm14145.doc.htm

[97] Lewy G. Assisted Suicide in US and EUROPE published by Oxford University Press (2011).

[98] 9th Edition of Black's Law Dictionary

[99] Aruna Ramchandra Shanbaug vs Union of India & Ors... Writ Petition (Criminal) No.115 of 2009, which was decided on 7th March 2011. See also, http://www.supremecourtofindia.nic.in/outtoday/wr1152009.pdf Accessed on 20th June 2016.

[100] Dowbiggin I.A "Merciful End: The Euthanasia movement in Modern America" Published by Oxford University Press (2003)

that anyone who helps in carrying out murder is guilty of the crime of murder as it were[101]. The term "Assisted suicide" is strange to Nigerian laws. Perhaps a further definition of this term will clear some thoughts; an assisted suicide is an 'intentional act of providing a person with the medical means or the medical knowledge to commit suicide'.[102] There have been arguments for and against euthanasia.

Some arguments for euthanasia include;

- Act of compassion
- Way of relieving cases of extreme pain
- Way of peaceful ending of a terminally ill person

Some arguments against euthanasia include;

- Euthanasia defiles the right to life
- Euthanasia can easily be used for selfish reasons
- Euthanasia is against the Hippocratic Oath for the Medical Practitioners

Euthanasia cannot be found as it were under the criminal code and the penal code which are both applicable in the southern and northern Nigeria respectively. Section 316 of the Criminal code defines murder; the Nigerian Criminal code absolutely criminalises the killing of another person unless such killing is justified by law. In an article by Bright Eraze and Oniha Osato, 'the Nigerian 1999 constitution clearly provides for the right to life of every person, and that no one shall be deprived intentionally of his life, except in the execution of the sentence of a court of a criminal offence of which he has been found guilty in Nigeria'.[103]

The provision of Section 33 (2) (a-c) further explains certain conditions in which the right and sanctity to life can be denied, thereby amounting to loss of life. And this provision is consistent with other international human rights instruments such as the Universal Declaration of Human Rights (1948), the American Convention on Human Rights, the European Convention for the protection of Human Rights and Fundamental Freedoms and the African Charter on Human and Peoples' Rights, which all guarantees the right to life.[104]

The right to life cannot be read alone without linking it up with the right to integrity and dignity of every person which is one of the things that make life and the right to life comfortable; "Also inherent and a necessary corollary to the right to life, is the right to

[101] Criminal Code Law,Section 315, 306 and 308, 311, 327.
[102] 9th Edition, Black's Law Dictionary
[103] Bright E, Oniha; Oniha Osato Mabel "Euthanasia and Assisted Suicide as Basic Constitutional Rights Under the 1999 Constitution of Nigeria"
[104] ARTICLE III, ARTICLE 4, ARTICLE 2, ARTICLE IV of the aforementioned international instruments respectively.

dignity of every human and the right to be free of a permanent state of torture and inhuman or degrading treatment within the contemplation of section 34(1) of the Constitution. The image of a terminally ill patient trapped within a body and undergoing constant and permanent pains, torture and suffering with no hope of recovering and without a possibility of medical euthanasia or assisted suicide cannot be the intention of the makers of the Constitution in section 33(1)".[105] So the rule established here is that, the constitutional provisions, must be read in a broad sense and not in isolation. The right to life must be read and practicalised with the liberal interpretation and literal approach of other rights. The Nigerian Supreme Court has submitted that Section 33(1) of the 1999 Nigerian Constitution cannot be read in isolation, but must be read together with sections 34 &35 (1) of the Nigerian Constitution which is on the quality of human life, and is therefore ancillary to the proviso of section 33(1) which is right to life.[106]

[105] Bright E, Oniha; Oniha Osato Mabel "Euthanasia and Assisted Suicide as Basic Constitutional Rights Under the 1999 Constitution of Nigeria"

[106] Nafiu Rabiu v State (1981) 2 NCLR 293; AG of BENDEL STATE v AG FEDERATION (1982) 3 NCLR 166.

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# CHAPTER FOUR

## VIOLATION OF RIGHT TO LIFE IN THE OIL PRODUCING REGION BY THE NIGERIAN GOVERNMENT AND THE OIL COMPANIES.

### 4.0 INTRODUCTION:

Nigeria over the past few decades has had persistent issues with the environmental cleanliness, water purification, farm products replenishing and other economic gains for the oil producing region. It is important to quickly use the introductory part of this concluding chapter, to give a brief history of oil discovery and exploration activities in Nigeria. This is viewed as a good background, for the readers of this academic research to be able to grasp the legal background and justification for the demands of the Niger-Delta and Ogoni-land indigenes. The Petroleum sector in Nigeria, happens to be the largest petroleum industry on the African continent. The Nigerian petroleum sector makes provision for around 14% of Nigeria's economy. Going by reports, 'Nigeria as of the year 2000, had an accountable 98% of export earnings and around 83% of federal government revenue from oil and gas exports; and this also provided 95% of Nigeria's foreign exchange earnings, and 65% of the Nigerian government budgetary revenues'.[107]

'Nigeria discovered Oil at Oloibiri in the year 1956, in the NIgeri Delta region. The oil discovery was made possible by Shell-BP, and as at that time, it was the only concessionaire. After the discovery of the crude oil by Shell D'Arcy Petroleum, production started in the year 1958 at the oil field that was situated in Oloibiri'.[108] It is important to note that, Nigeria has a hundred and fifty-nine (159) Oil fields and One thousand, four hundred and eighty-one (1481) wells that are currently in operation, according to the Ministry of Petroleum Resources[109]. In addition, currently India happens to be Nigeria's largest oil consumer because of the impact of Shale production in America, which made Nigeria to stoop its exporting of oil to America in July 2014.[110]

### 4.1 OIL ACTIVITIES IN NIGERIA AND VIOLATION OF RIGHT TO LIFE:

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[107] US Energy Information Administration "Nigeria Country Analysis Brief'(1997); See also, http://www.oilandgascouncil.com/expert_insight_articles/review-nigeria-oil-gas-industry Accessed on 27th June 2016

[108] NNPC 'History of the Nigerian Petroleum Industry'; See also, http://www.nnpcgroup.com/NNPCBusiness/Businessinformation/OilGasinNigeria/IndustryHistory.aspx Accessed on 27th June 2016

[109] Environmental Resources Managers Ltd, Niger Delta Environmental Survey Final Report Phase I; Volume I: Environmental and Socio-Economic Characteristics (Lagos: Niger Delta Environmental Survey, September 1997

[110] Sarah Ahmad Khan "Nigeria: The Political Economy of Oil" Vol 2 of Political Economy of oil-exporting countries Oxford Institute for Energy Studies; See Also http://www.thisdaylive.com/articles/as-us-shuts-its-door-on-nigeria-s-oil-exports/190455/ Accessed on 27th June 2016

First of all, it is important to note that, Ogoni-land is not different from Niger-Delta. In fact, Ogoni-land is situated in a part of Niger-Delta, that happens to be at the Southern part -South-South region) of Nigeria. So in the cause of this academic research, the word Niger-Delta would mostly be used to refer to all the oil-producing parts as a whole; except where there is direct emphasis towards an explanation which concerns the Ogoni revolution.

The Niger-Delta region is located at the 'apex of the Gulf of Guinea on the West Coast of Africa[111], and on the Nigeria's South-South geopolitical zone; and it consists of nine oil-producing states which includes, Abia, Akwa-Ibom, Bayelsa, Cross-River, Delta, Edo, Ondo, Imo and Rivers state'.[112] According to a report which puts Niger-Delta as one of the world's largest tertiary delta systems states that,

"The Niger Delta is one of the world's largest tertiary delta systems and extremely prolific hydrocarbon provinces globally. The Niger Delta basin has been one of the most studied basin because of the occurrence of vast deposits of petroleum resources and the current production of all Nigeria's oil and gas is derived from this region..."[113]

In another report by Curtis, he stated as follows, "...a large portion of the world's oil and gas reserves are in tertiary terrigenous fill on passive continental margins and the most significant hydrocarbon deposits of this type could be found in the U.S. Gulf of Mexico, Canadian Beaufort-Mackenzie Delta and Nigeria's Niger Delta. Advances in evaluation and improved seismic technology showed that the Niger Delta petroleum systems consist of Lower Cretaceous (lacustrine), Upper Cretaceous–lower Palaeocene (marine) and Tertiary (deltaic). The geological assessment of the source material has shown that the principal source for oil and gas in the Niger Delta belonging to the tertiary deltaic petroleum system. Over the past five decades, a total of about 1,182 exploration wells have been drilled to date in the delta basin, and about 400 oil and gas fields of varying sizes have been documented.[114]

So far so good, this academic research has given a sufficient insight into the background of oil discovery, exploration and other oil activities in Nigeria. However, the aim of this academic research is not to explore the theoretical activities of oil companies in terms of their business engagement, rather, this academic research aims at point out places where

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[111] Haack, R. C., P. Sundararaman, J. O. Diedjomahor, H. Xiao, N. J. Gant, E. D. May, and K. Kelsch, "Chapter 16: Niger Delta Petroleum Systems, Nigeria," Petroleum Systems of South Atlantic Margins: AAPG Memoir 73, M. R. Mello and B. J. Katz, eds., pp. 213-231: American Association of Petroleum Geologists (AAPG), 2000.

[112] Doust, H., "Petroleum geology of the Niger Delta," Geological Society, London, Special Publications, 50 (1). 365-365, 1990

[113] Obaje, N. G., Geology and mineral resources of Nigeria, Berlin; London: Springer, 2009

[114] Curtis, D. M., "Comparative Tertiary petroleum geology of the Gulf Coast, Niger, and Beaufort-Mackenzie delta areas," Geological Journal, 21 (3). 225-255, 1986.See Also, Ibid (Haaack) (Doust, H),

there has been environmental pollution, hazardous oil activities, failed compensation, non-environmental cleansing and other acts which surely can be categorized as a violation of right to life for the people living in the Niger-Delta region of Nigeria.

So therefore, it would not be a diversion to start this phase of explanation with answering questions such as, what is environmental pollution? How does it affect human lives? What is the position of Nigerian legislature towards the oil sector and its activities towards the Niger-Delta people? Is there any international law or treaty concerning oil activities? These are likely questions that should be answered, if going by the topic of this academic research.

Now, on the issue of defining what is environmental pollution, environmental pollution is the act or process whereby contaminants are introduced into a natural atmosphere, which leads to adverse effects on healthiness, survival and economy of humans residing in such place. Pollution itself can take place in various forms, which includes, form of chemical substances or energy etc. but in the instance case of the Niger-Delta, Oil-spill can be categorised as a form of environmental pollution, which sets the lives of the people living in those locations at a deadly risk. "Pollution has been defined as man-made or aided alteration of chemical, physical2 or biological quality of the environment to the extent that is detrimental to that environment or beyond acceptable limits. Pollution is therefore a phenomenon that is adverse to the environment. Oil and gas Pollution describes the pollution of the environment occasioned by oil and gas prospecting and production",[115]

Oil spillage is the act of discharging a liquid petroleum hydrocarbon into the environment, and as earlier noted that the Niger-Delta is mostly a marine area. Oil spillage could be as a result of oil-drilling, offshore platforms, or any other oil related activities. Furthermore, oil spillage is a hazardous process, this is because of its deadening effects on living things (birds, fishes, mammals and even humans). The Nigerian government only recently launched an attempt to start a clean-up and recovery of affected parts of Niger-Delta after many years of loss of lives, farms, water, food, education, developments, health and other things which ought to have contributed to the growth of a standard minimum of living of the people of Niger-Delta.[116] It was only recently launched by the President of Nigeria, Mohammad Buhari by 02/06/2016 to flag off the clean-up of oil spills in the Niger-Delta area

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[115] section 41 of the FEPA Act, Cap F 10, LFN,2004; See Also, International Law and the Prevention and Control of Oil and Gas Pollution, Journal of Law, Policy and Globalization Vol 35, 2015; See Also, Article III of the International Convention on Civil Liability for Oil Pollution Damage

[116] dailypost.ng/2016/05/31/ogoni-clean-up-buhari-visits-niger-delta-june-2-amid-bombing-of-installations Accessed on 27th June 2016

as recommended in the United Nations Environment Programme (UNEP) report[117]. More importantly, due to the oil spillage in the region of Niger-Delta, there have been reports by the people of that region, seeking compensation. Unfortunately, some of them have only met with the brutality of the Nigerian economic and political interferences[118]. In one of the reports of Environmental Rights Action (ERA), there was a case involving some communities of Ikarama and Zarama with Shell, after an occurrence of oil spillage;

"This [spill] has prevented us from eating. Since we do not have water flowing in our taps, the river is the only source of water for drinking, cooking, washing and bathing. Since the spill on the creek, we no longer use it as we used to. Our children, who are ignorant, often go to swim in it only to come out crying and scratching their eyes and other parts of their bodies, besides becoming feverish. The oil is affecting the fishes in the creek, fishing activities are no more and even the cassava our people usually soak in the river for the purposes of preparing foofoo were badly affected as the spill took us by surprise. Our only source of drinking has been polluted with adverse health conditions as a consequence. Last week when I was ill and went to a clinic in Port Harcourt, I was told that my illness is related to the water I drank. Apart from this spill affecting fishes and cray fish, even the fishing gears are affected and damaged by the spill".[119]

Furthermore, there was also a report on a case of oil spillage involving Shell and some indigenous communities in the Niger-Delta area, and below quoted is a press report concerning the case;

"The plaintiffs filed three separate lawsuits, each one addressing the impact of oil spillages in the three villages – Oruma, Goi and Ikot Ada Udo. The Oruma lawsuit claims that oil spillages occurred on 26 June 2005 and that Shell Petroleum Development Company of Nigeria ("Shell Nigeria") (Shell's Nigerian operating company) only closed the hole in the pipeline on 29 June 2005. Allegedly, the oil flowed into plaintiffs' farmland and fishponds, polluting it and making it unfit for use. The plaintiffs further claim that the clean-up started in November 2005 and that neither the environment near Oruma nor their oil-polluted property has been adequately cleaned by Shell Nigeria. With regard to the allegations of

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[117] http://postconflict.unep.ch/publications/OEA/07_ch07_UNEP_OEA.pdf See Also, http://www.unep.org/disastersandconflicts/CountryOperations/Nigeria/EnvironmentalAssessmentofOgonilandreport/tabid/54419/Default.aspx Accessed on 29th June 2016

[118] News headline: Author: Ivana Sekularac & Anthony Deutsch, Reuters, Published on: 30 January 2013 https://business-humanrights.org/en/dutch-court-says-shell-partly-responsible-for-nigeria-spills Accessed on 29th June 21

[119] Environmental Rights Action Interview with Mrs Penninah Ivelive, Justice Ikah, Jonah Zagunu, Chief Esau Bekewei.

negligence, the suit argues that Shell Nigeria acted negligently by allowing the oil spill to occur, or at least it did not prevent or limit it, and did not adequately clear the oil. Plaintiffs also allege that Shell plc (the parent company) was negligent because it did not ensure that its subsidiary carried out oil production in Nigeria in a careful manner, although it was able and obligated to do so. The other two lawsuits make similar claims regarding oil spillages in Goi and Ikot Ada Udo. On 13 May 2009 Shell submitted a motion to the court arguing that the Dutch courts lacked jurisdiction over the actions of the Nigerian subsidiary. On 8 July 2009 the plaintiffs filed their Statement of Defence to the Motion Contesting Jurisdiction at The Hague district court. On 30 December 2009, The Hague district court ruled that it did have jurisdiction over the plaintiffs' case. On 24 March 2010, former Shell Transport and Trading Company and Dutch Shell Petroleum N.V. (Shell's Dutch subsidiary) were added as defendants after Shell argued that it cannot be held responsible for actions of its predecessors. Lawyers for the plaintiffs requested the defendants to disclose relevant internal documents. On 16 June 2010, Shell denied plaintiffs' request for disclosure of internal documents, stating it cannot be forced to and is not able to provide them. Shell appeared in court to respond to the plaintiffs' allegations in October 2012. On 30 January 2013 the Dutch court issued a decision ordering Shell to pay compensation to one of the farmers, but it dismissed the balance of the claims. In December 2015, a Dutch appeals court reversed its dismissal and permitted the balance of the claims to go forward. The appeals court also ruled that Shell must grant the claimants access to certain internal company documents essential to the case"[120]

In the case of Centre for Oil Pollution watch vs NNPC[121], there was clearly stated unhealthy and unsafe conditions suffered by some villagers in the Oil producing region due to oil leakage in the defendant's oil pipeline which resulted in damage of food crops, unhealthy living environment and other inhumane conditions which the villagers became subjected to. In the law report concerning this case, the court is thus quoted below;

"The oil spill --- into the Ineh and Aku Streams, estuaries has deleterious effect as harm to living resources and marine life, hazards to human health, hindrance to marine life and other legitimate use of the steams. It has impaired the quality for the use of the streams and resulted in reduction of amenities and economic activities of the people - The oil spillage left the --- steams impure, soiled, and contaminated and they could no longer be put to their

[120] https://business-humanrights.org/en/shell-lawsuit-re-oil-pollution-in-nigeria Accessed on 29th June 2016
[121] (2013) LPELR-20075 (CA) Court of Appeal, LAGOS JUDICIAL DIVISION

ordinary and natural use. They are no longer good for human consumption and; aquatic lives, sea birds, fraud and flora no longer abound in them".[122]

Well, in as much as the issue of oil spillage seems to be the most popular of all pollutions, being suffered by the people of the Niger-Delta region, it is necessary to also bear in mind that, there is another pollution known as the Gas flaring. The absolute truth is that in the Niger-Delta region of Nigeria, the process and act of Gas flaring in that atmosphere has created a lot of health and life threatening risks to that environment and the people inhabiting the place. But notwithstanding the 'unpopular' issues relating to the process of Gas flaring and its impact on the people of the oil producing region of Niger-Delta, there have been researches, conducted in that field.[123]

Concerning the issue of Gas flaring, it is important to note that, even though few of those who have conducted research on that field have been mentioned, there is still a lacuna, in thorough analysis of Gas flaring, "These problems are obviously important since the inhabitants and most of their activities as well as their cultural heritage and associated economic values are dependent on the built environment. The degradation of the quality of such structures could also lead to the destruction of valuable lives, machineries, cars, buildings and other sources of livelihood. There have been several recorded cases of health hazards associated with problems of Lungs and other related cases which were diagnosed in some patients. Some of these cases were proved to be caused by acid rain water consumed by patient from the area where Gas flaring has been on over the years. In addition, unhealthy effects of gas flaring within the study area associated with increased risk of dermatological problems, spontaneous abortion and numerous kinds of Cancer. From the foregoing it is pertinent that gas flaring if not mitigated shall bring about catastrophic health and other problems to the inhabitants living close to the gas flaring points[124]

In conclusion, it is important to note that Oil pollution and Gas flaring pollution are both regulated at the international sphere via the customary international law and several international agreements. The International Court of Justice held in the case of Chorzow

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[122] Ibid page 11 paragraph D.

[123] Isichei and Sanford (1976); Odu (1995); ECLONES (1993); Oyelunle (1999); Uzuukwa (1999); Onier and Aborio (2000); Okocha (2000); Efefaroro (2001) and Efe (2003).

[124] Iyorakpo, Julius and Odibikuma P Wagio "IMPACT OF GAS FLARING ON THE BUILT ENVIRONMENT: THE CASE OF OGBA/EGBEMA/NDONI LOCAL GOVERNMENT AREA, RIVERS STATE, NIGERIA", European Scientific Journal Septeember 2015, Ed Vol 11. See Also, Ens-newwire.com (2005) "Nigeria judge rules Gas flaring violates constitutional rights' http://www.ens-newwire.com/2005-11, 15-04 asp. Ppl.

Factory[125] that, the "the ICJ held that the obligation to restore the environment and make reparation as well restitute and compensate victims of oil pollution is a cardinal principle of international law". Below listed are several other international treaties that deal with Oil pollution;

- International Convention On Oil Pollution of the Sea by Oil (1954, Amended in 1962)
- International Convention On Oil Pollution Preparedness, Response and Co-Operation (OPRC) 1990
- International Convention On the Establishment of an International Fund for Compensation for Oil Pollution Damages (Fund Convention) 1971
- International Convention for The Prevention of Marine Pollution by The Dumping of Wastes and Other Matters (London Convention) 1972

[125] http://www.icj-cij.org/pcij/serie_A/A_09/28_Usine_de_Chorzow_Competence_Arret.pdf Accessed on 30th June 2016

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