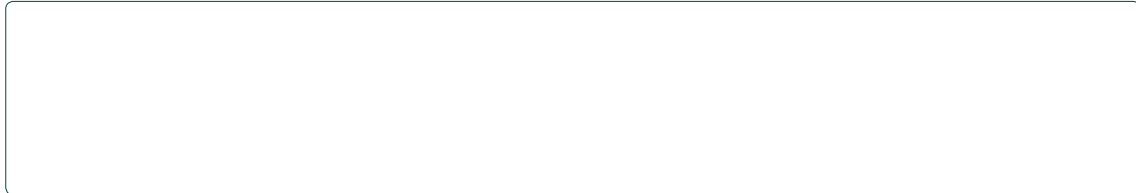


Right to Survival as Extension of Rights

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Keywords:

In the recognition of the right of children to survival, the Convention has further entrenched in its provisions:

1. *States Parties recognize that every child has the inherent right to life.*

2. *States Parties shall ensure to the maximum extent possible the survival and development of the child [9].*

Construing this provision, countries that are party members to this convention have the legal obligation to “a ord the necessary protection and assistance” via the provision of basic facilities in order to “promote social progress and better standards of life” for children [10,11]. ese provisions include the right to be born, right to minimum standards of food, she.bs ree

international declaration of fundamental human rights, recognized the right to health in its provision:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services [24]...

In another copious recognition of the right to health, the International Covenant on Economic, Social and Cultural Rights enumerates in its covenant thus:

1. *e States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

2. *e steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*

a. *e reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*

b. *e improvement of all aspects of environmental and industrial hygiene;*

c. *e prevention, treatment and control of epidemic, endemic, occupational and other diseases;*

d. *e creation of conditions which would assure to all medical service and medical attention in the event of sickness [25].*

is provision states the particular steps to be taken in the safeguarding of the health and the advanced provision of healthcare in Nigeria. Apropos of the above, there are equally national recognitions of the right to health using Nigeria and India as a case study. In Nigeria, the Constitution of the Federal Republic of Nigeria states thus:

e State shall direct its policy towards ensuring that –

e health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;

ere are adequate medical and health facilities for all persons [26].

is is construed to mean that all the laws the government is to make must be targeted at providing adequate and quality health and medical facilities across the country. In other words, this provision, in implied terms, recognizes the right to health of Nigerians in which the government must always seek to uphold. It is on this basis the National Health Insurance Scheme was established [27]. e scheme was created to be a leading agency committed to achieving nancial access to quality healthcare for all Nigerians. It equally bears a mission to mobilize and pool nancial resources for strategic purchasing of a ordable and quality [28]. Since the establishment of the National Health Insurance Scheme, there have been signi cant increases in outpatient and inpatient attendance, revenue, expenditure and improved access to medicines.

Also, the National Health Act establishes a National Health System empowered to provide “for persons living in Nigeria the best possible health services within the limits of available resources” and to “protect, promote and ful l the rights of the people of Nigeria to have access to

enforce the right to a healthy environment for the people.

In Nigeria, it is worthy of note that the Constitution provides and recognizes the need to provide a healthy environment where it states as follows:

The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria[42].

Equally, Article 24 of the African Charter on Human and Peoples' Rights provides thus:

All peoples shall have the right to a general satisfactory environment favourable to their development.

These provisions are in agreement to the dire need for a safe and healthy environment which is strongly related with the survival of human beings in various countries. However, in Nigeria, the enforcement of this right is, just like the right to health, to some extent deterred following its non-enforcement in Court. In this regard, the Nigerian government have made laws that directly recognize and guarantee the right to a healthy environment for the people. These laws include:

- National Environmental Standards Regulations and Enforcement Agency (Establishment) Act 2007 (NESREAA). This statute was created under the 1999 Constitution of the Federal Republic of Nigeria (section 20) and repealed the Federal Environmental Protection Act 1988 [43]. The NESREA, the major federal body responsible for protecting Nigeria's environment is responsible for enforcing all environmental laws, regulations, guidelines, and standards [44]. It includes enforcing environmental conventions, treaties and protocols to which Nigeria is a signatory [45].

- Environmental Impact Assessment Act (Cap E12 LFN 2004). The general principles, techniques, and methods of environmental impact assessment in diverse sectors are outlined in this regulation.

- Harmful Waste (Special Criminal Provisions etc) Act (Cap H1 LFN 2004). This law makes it illegal to transport, deposit, or dump hazardous material on land or in territorial seas.

- Endangered Species (Control of International Trade and Traffic) Act (Cap E9 LFN 2004). As mandated by several international treaties, this provides for wildlife conservation and management, as well as the preservation of endangered species.

- National Oil Spill, Detection and Response Agency Act 2006 (NOSDRA). The goal of this law is to put in place machinery for Nigeria's National Oil Spill Contingency Plan to ensure a safe, fast, effective, and appropriate reaction to massive or disastrous oil pollution.

These laws have been put in place in the respect of the right to a health environment of the people. There are equally several established agencies in this regard which include the Federal Ministry of Environment, National Environmental Standards and Regulations Enforcement Agency (NESREA), National Oil Spill Detection and Response Agency, Directorate of Petroleum Resources (DPR), Nigerian Nuclear Regulatory Authority, and so on.

In the case of Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation [2019] 5 NWLR (Pp. 587, paras. D-F; 597, para. H), the Supreme Court recognized the right to a healthy environment when the Court stated thus:

Section 33 of the 1999 Constitution guarantees the right to life while section 20 of the Constitution provides that the state shall protect and improve the environment and safeguard the water, air and land, forest

and wild life of the country. Also, article 24 of the African Charter on Human and Peoples' Rights provides that all people shall have the right to a general satisfactory environment favourable to their development.

These provisions show that the Constitution, the legislature and the African Charter on Human and Peoples' Rights, to which Nigeria is a signatory, recognise the fundamental rights of the citizenry to a clean and healthy environment to sustain life [46] (Emphasis are the writer's)

Further, in the landmark case of Jonah Gbemre v. Shell Petroleum Development Co. Nigeria and 2 Ors [47]. The case can be found in the court records with suit No. FHC/B/CS/153/2005 (Federal High Court Benin Division) (Justice Nwokorie).], members of the Iwherekan village in Delta State, Nigeria, led a lawsuit alleging that fumes from the defendant's oil and gas explorations were harmful to their health and the environment, as well as causing food shortages. They claimed that their fundamental rights under the Nigerian Constitution (articles 33 and 34 – life and dignity of human person) as well as the African Charter had been violated (Arts 4, 16, and 24). The applicants requested a declaration that the right to life guaranteed by Section 33 of the Nigerian Constitution, as well as the right to dignity of the human person guaranteed by Section 34 of the Nigerian Constitution, "includes the right to a clean poison free, pollution free, and healthy environment."

The Supreme Court agreed with this broad interpretation of the right to life, noting that "both constitutionally guaranteed rights (right to life and right to dignity of human being) unavoidably encompass the right to a clean, poison-free, pollution-free, healthy environment." The Court went on to say that "respondents' actions in continuing to engage in gas in the course of their oil exploration and production activities in the applicants' community is a gross violation of their fundamental right to life (including a healthy environment) and dignity of human person as enshrined in the Constitution[48]."

On the other strand, the Constitution of India, 1950 in Article 48A makes an express provision of the responsibility of the State to the citizens in guaranteeing their right to a healthy environment:

The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

Equally, Article 51A(g) makes an express recognition of the right to environment, however, this falls within the fundamental duties of the citizens:

It shall be the duty of every citizen of India - to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures

It is the responsibility of all citizens, just as it is the responsibility of the state, to not only conserve the environment but also to take sufficient measures to improve it. In Kinkeri Devi v. State [AIR (1988) HP 4], the Himachal High Court in the application of Article 48-A and Article 51A(g) held that it is both a constitutional obligation to the state and a constitutional duty of citizens to not only maintain but also develop the environment, as well as to preserve and defend the country's forests, flora and fauna, rivers and lakes, and all other water resources.

In another case of Goa Foundation v. the State of Goa, the petitioner was a society registered under the regulations governing society registration, and its members were Indian citizens who had a fundamental obligation under Article 51-A to safeguard and improve the environment, lakes, woods, and rivers, as well as to have compassion for living beings [49]. The question of whether the society had locus standi to move to the court or not was raised before the court. The Supreme court gave a resounding affirmative response to this question,

holding that society had the same fundamental responsibility. The petitioner was found to have locus standi to go to court in order to not only prevent environmental degradation, but also to form and implement provisions aimed at restoring the ecology and maintaining

country received 100 additional ventilators in April 2020, but this will not be enough to meet the expanding caseload.

To mitigate the impact of COVID-19, the Nigerian government has implemented a number of health, social, and economic initiatives. However, several of the policy remedies have flaws and, when taken together, are insufficient to address the scope of the problem.

Conclusion

The entire existence of a person has attributed to the guarantee of the constitutional provision of the right to life. However, a person cannot be alive without the necessary implantations put in place that will ensure the sustainability of such life. As a result, there have been notable and significant expansion of the right to life to entail the right to survival. In other words, by the provision of the right to survival, necessary parties; the government and the public in general, have a constitutional duty to provide and ensure the basic amenities that will keep a person alive. Albeit there are limited direct provisions for the right to survival of a person, there are legislative provisions that play this role, and can be enforced in the court of law.

Acknowledgement

None

Conflict of Interest

None

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