



TITLE

**THE RIGHT TO LIFE FROM A SOCIAL AND ECONOMIC PERSPECTIVE: A
CRITICAL ANALYSIS OF THE STATE'S OBLIGATIONS**

A research paper submitted to the School of Law of the University of Zambia in partial fulfillment of the requirements for the award of the degree of Bachelor of Laws (LLB).

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LLB
MUS
2003
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UNZA

NOVEMBER 2003

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

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Entitled:

THE RIGHT TO LIFE FROM A SOCIAL AND ECONOMIC PERSPECTIVE: A
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Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements relating to the format as laid down in the regulations governing obligatory essays.

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Date.....

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DEDICATIONS

This paper is dedicated to my father Mr. Mike Musopelo and my mother Mrs. Pumulo Musopelo who have always been an encouragement to me and have seen me through this far. I am highly indebted to your unfailing love, moral and financial support. For the times when I thought I could not make it, your faith in me kept me going.

Psalm 121 'My Help Cometh from the Lord'

ACKNOWLEDGEMENTS

I am indebted to a lot of people who helped me complete this work, which was not an easy task.

Firstly, I would like to thank Dr A. Chanda for being my supervisor and most importantly, for his tolerance, patience, understanding and guidance in seeing my research through. I am highly indebted to him.

I would also like to thank Mr. Mubanga of Lusaka City Council for being very helpful in ensuring that I got the information I needed. My gratitude also extends to Mr. Mulembe of Permanent Human Rights Commission.

My special thanks also extend to my friends who have been a tremendous support during my stay on campus. I especially want to thank those who believed in me and gave me strength to go on and those who gave me academic support.

On a personal note, I would like to thank my wonderful brothers and sisters for their unflinching support and faith in me; and my nephews Tabo and Cholwe whom I wish were old enough to see how far I have come.

Words are not enough to express my gratitude to my help, Jehovah-God. Lord without you there is no me.

May the almighty God bless you all.

LUKAKI BELINDA MUSOPELO

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The Constitution of Zambia

The Penal Code, CAP 87 of the Laws of Zambia

Termination of Pregnancy Act, Cap 304 of the Laws of Zambia

CHAPTER ONE

THE RIGHT TO LIFE AND THE LAW

1.0 Introduction

It has been stated in many international human rights texts that the right to life is a basic human right, which is inviolable, that is to say, that it cannot be waived, renounced or transferred. Furthermore, it is an essential right and all the rights derive from it, if a person is deprived of his right to life, all other human rights will be meaningless.¹

There are at least two ways of depriving the right to life:

- (1). By execution, disappearances, torture and various forms of cold-blooded murder and,
- (2). By starvation and lack of fulfillment of basic needs such as food, basic health facilities and medical care.²

The relevant legal instruments on the right to life expressly deter the taking away of life through an act of killing but they do not seem to expressly deal with the taking of life by denial of the essential elements that sustain the life of human beings. But it is meaningless to differentiate killing by an act of a state and by starving a person to death, because both forms of behavior constitute the worst form of cruelty.

¹ P. Schwab, *Human Rights – Cultural and Ideological Perspectives*, New York (1979)

² B. G. Ramcharan (ED), *The Right to Life in International Law*, Martinus Nijhoff Publishers, Lancaster (1925).

Such a restrictive interpretation and understanding of the right to life is no longer adequate in the dynamic and changing events of the world today.

A question may be asked; do the millions of poor people around the world have rights? If they have some rights, the right to survive must be the foremost of these rights. If their right to survival were denied through lack of access to survival requirements, wouldn't such a denial violate their right to life?

According to World Health Organisation (WHO) 'Nearly 1000 million people are trapped in a vicious circle of poverty, malnutrition, disease and despair that saps their energy, reduces their work capacity and limits their ability to plan for the future. For the most part they live in the rural areas and urban slums of developing countries.'³

Diarrhoeal diseases, which are transmitted by human faecal contamination of soil, food and water, are the most widespread in the developing countries, such as Zambia. Only about a third of the people living in the world's least developed countries have dependable access to safe water supply and adequate sanitary facilities.⁴

Under nutrition afflicts hundreds of millions of people, reducing their resistance to disease. In developing countries approximately two-thirds of the population does not have reasonable access to any permanent form of health care.⁵

³ World Health Organisation, Global Strategy for Health for all by the year 2000

⁴ Ibid

⁵ Ibid

Faced with the above situation where a great many innocent human beings die daily due to hunger and diseases, can it be said that this has nothing to do with the right to life? If deprivation of the lives of millions of people through lack of access to survival requirements is not a right to life issue, then it can be said that the whole concept and notion of the right to life in its restricted and narrow sense does not apply to more than a billion people around the globe.

Having identified this problem, the scope of this essay shall focus on the analysis of the right in the broad sense, mainly, from a social and economic perspective. The essay shall also look at contentious issues arising under the right to life. These issues are:

- Abortion - is an unborn child entitled to the right to life?
- HIV/AIDS pandemic – what is the state doing about it?

International instruments and documents shall be used to illustrate the interpretation of the right to life in the broad sense. This, with the help of national legislation, will in turn bring to light, what the law says about the right to life.

1.1. Definition of the Right to Life

There are basically two definitions of the right to life. These are the traditional or narrow definition and the broad definition.

1.1.1 The Traditional or Narrow Definition

The traditional or narrow definition of the right to life is one that is found in most international and national institutions. Tikhonov writes:

“The most important peculiarity of the first stage in the conceptualization of the right to life and its consolidation in international law consists in its traditional interpretation. The distinctive features of such interpretations are: on the one hand, the strictly individual nature of this rights, on the other hand – accentuation of the predominantly intra-state aspects thereof. This is confirmed, by the existing international legal instruments,”⁶

The most classical example of the narrow definition of the right to life is the one found in Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), which provides:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrary deprived of his life...”

This narrow definition, as is seen above, puts much emphasis on the individual, as is the case with the rest of the political and civil rights. Zambia acceded to the ICCPR on 10th of April 1984. This means that Zambia adopted this treaty and is bound by its provisions.

The right to life is also enunciated in Article 3 of the Universal Declaration of Human Rights (UDHR). This article provides that:

“Everyone has the right to life, liberty and security of person.”

A similar definition is also found in Article 4 of the African Charter on Human and People's Rights (ACHPR), which provides 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.”

Under national legislation, a similar narrow definition is found in Article 12 (1) of the Zambian Constitution. This Article provides that:

“No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.”

1.1.2 The Modern or Broad Definition of the Right to Life

Low life expectancy reflects very high death rates among children under five years of age. In the poorest regions of low – income countries, half of all children die during the first year of life. For people who survive beyond the age of five, life expectancy is six to eight years less than in developed countries. It is estimated that less than one-tenth of the life the average person in a developing country is seriously disrupted by ill health.⁷

It is submitted in international law that narrow approaches to the right to life are no longer adequate and that, indeed, the right to life as a modern concept goes considerably beyond the traditional view, as has been demonstrated above.

⁶ A. A. Tikhonov, 'The Inter-Relationship Between the Right to Life and the Right to Peace', in B. G. Ramcharan (ED) *Supra* note 2

The Human Rights Committee (HRC) in General Comment No. 6⁸ described the right to life as, 'the supreme right from which no derogation is permitted even in time of public emergency [...]'. The committee took a broad approach to the right to life. The committee stated expressly that the right to life has often been too narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner and the protection of this right requires that states adopt positive measures.

In this connection, this Committee considers that it could be desirable for states parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

The Committee also stated that the right to life may never be suspended, and called upon governments to fulfill their responsibilities in upholding respect for this right in all circumstances, even in the Zambian poor economy situation.

The Commission has also called upon states to fulfill their basic duty to assure satisfaction of the survival requirements of their people in the area of food and health.

According to the World Bank, nearly 800 million persons live below any acceptable level of human decency. Millions of children die each year on account of hunger and disease.

⁷ Robert S. McNamara, 'Address to the Board of Governors of the World Bank', Washington D.C. World Bank (1997)

⁸ Paragraph 1 of the General Comment No. 6 (16) adopted by the UN Human Rights Committee on 27 July (1982).

1.2 The Implications of the Broad Sense

Firstly, the right to life is an imperative norm of international law, which should inspire and influence all other human rights. That is to say, rights such as the right to a safe and healthy environment, which are closely connected to the right to life, should take cue from the imperative norm of the right to life.

Secondly, in its most modern sense, the right to life encompasses not merely protection against arbitrary deprivation of life, but also places a duty on the part of each government to pursue policies, which are designed to ensure access to the means of survival for every individual within its country.

If after its best efforts, in good faith, a government is unable to meet the survival requirements of its own people, then a residual duty vests upon the international co-operation. The duty of the state to assure satisfaction of the survival requirements of every person within its jurisdiction must be considered an unavoidable component of the right to life in its modern sense. Any other conclusion is unacceptable in a world in which millions of children die each year on account of hunger and disease, and in which millions of children have their life span drastically reduced for the same reasons.

The rationale of the concept of the right to life may thus be said to be the protection of the life of every individual human being from all possible threats. The right seeks to enable

each individual to: have access to the means of survival, realize full life expectancy, and avoid serious environmental risks to life.

1.2.1 Contemporary Factors Affecting the Right to Life

In contemporary international society, the following major problems affecting the realization of the right to life may be cited:

(a). **Problems of Survival**

Whole communities are sometimes placed at risk on account of serious environmental hazards.

(b). **Systematic or Structural Problems**

Inequitable national and international orders result in the non-satisfaction of survival requirements for millions of human beings causing phenomenal loss of life every single day.

(c). **Issues of Social Policy**

Abortion, euthanasia and the death penalty also raise right to life issues.

Guidance can be obtained from international practice on the issue of right to life and the satisfaction of survival requirements.

The Government of Australia, which had been an active member of the HRC during the drafting of the ICCPR, stated that:

“Two elements have engaged the attention of the draftsmen during the preparation of the article. These may be described as, firstly expression of what might be termed a traditional imperative of all civil societies – “Thou Shalt not Kill” – and secondly, some positive provision concerning the right to

life which, although not defined in the covenant, may be assumed to mean the right of every person to preservation and enjoyment of his existence as an individual. This is covered by providing that the right to life shall be protected by law.”

In this light the HRC appears to have correctly interpreted the right to life as requiring: that states adopt ‘positive measures’. In this connection, the Committee considers that it would be desirable for states parties to take all possible measures to, *inter alia*, eliminate malnutrition and epidemics.⁹

The Inter-American Commission on Human Rights has expressed similar views. It has held that:

“The essence of the legal obligation incurred by any Government in this area is to strive to attain the social and economic aspirations of its people, by following an order that assigns priority to the basic needs of health, nutrition and education. The priority of the “rights to survival” and “basic needs” is a natural consequence of the right to personal security (life).”¹⁰

The European Commission on Human Rights has also held that, ‘the concept that “everyone’s life shall be protected by law” enjoins the state not only to refrain from taking life “intentionally” but, further, to take appropriate steps to safeguard life.’¹¹ The practice within the United Nations, the European Commission and the Inter-American Commission

⁹ GAOR, Thirty-Seven Session, Supplement No. 4 (A/37/40) (1984)

¹⁰ Inter-American Commission on Human Rights – Ten Years of Activities, 1971 – 1981 (1982)

¹¹ Decision on Admissibility, Application 7174/75

tend to suggest therefore that the right to life has negative as well as positive dimensions and that the later, encompasses the right of everyone to the preservation and enjoyment of his existence as an individual. Governments should follow an order that assigns priority to the basic needs of infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

1.3 The Right to Life and the Right to a Safe Environment

Environmental deterioration or risks may directly threaten the loss of life or may affect the quality of life. Persistent to the quality of life may affect the realization of an optimal life span and one therefore not to be ignored, but when considering environmental issues from the point of view of the right to life, the focus should be on environmental hazards which involve direct risks of immediate loss of life if they are not removed.

With regard to this category of environmental hazards, what, it may be asked, has been the responses of international law so far, and what policies could appear to be indicated if one approaches the issue from the right to life perspective.

International law, hitherto, has endeavored to ascribe to state a general duty to safeguard the environment. The relationship between the right to life and the right to a safe environment may be summarized in the following propositions.

- (1). There is a strict duty upon states, as well as upon the international community as a whole, to take effective measures to prevent and to safeguard the occurrence of environmental hazards which threaten the lives of human beings.

- (2). Every state, should establish and operate adequate monitoring and early-warning systems to detect hazardous threats before they actually occur.
- (3). States and other responsible entities may be criminally or civilly liable under international law for causing serious environmental hazards to life. The establishment of such avenues of resource is essential for dealing with such risks before actually materialize.

1.4 The Satisfaction of Survival Requirements

Today's facts and figures about the state of poverty, malnutrition, deaths of millions of innocent children, men and women as a result of lack of survival requirement and basic necessities essential to sustain life is alarming and horrifying. A basic issue for consideration is, who has the primary and residual responsibility to meet the survival requirements of the one billion or so of not only 'have nots' in the world, but who are dying and on the verge of death for reasons explained above.

Undoubtedly, national governments have the primary and inherent obligation and duty to look after the well being of their own people. Yet there is a total failure on the part of the governments of many development countries, including Zambia, in meeting the survival requirements of their population.

National policies of many least developed countries benefit about 5% of the population. In some countries the right to life is protected by the law but such laws are not implemented

through lack of political will, serious commitment and appropriate administrative and implementing machineries as well as lack of active participation by the people in decision-making process which affect them.

The obligation of states to comply and meet survival requirements is of utmost priority. There is no higher primary and urgent obligation than this, for any government.

1.5 The State's Obligations

Duty to Respect and Ensure

Article 2 (1) of the ICCPR enjoins each state party to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the covenant. These include naturally the protection of the right to life contained in Article 6.

There can be no doubt that the right to life is the most important of all human rights. Indeed if there is no right to life, there would be no meaning in having other human rights.

'Article 6 describes the right to life as an inherent right.' It follows that; the right to life existed before the covenant and was not established by this text. Religions, moral or natural law rules all recognize the right to life in one form or another. For instance 'Thou Shalt not Kill' is a maximum found in many holy books.

The text Article 2(1) of ICCPR imposes a dual duty on the states party to it. On the one hand, the state involved undertakes to respect the rights recognized therein and on the other

hand, further undertakes to ensure to all individuals within its territory and subject to its jurisdiction, the rights recognized in the Covenant without distinction of any kind.

‘To respect’, is defined as, ‘act of noticing with attention, regard to, the giving of particular attention to, consideration ... ’

On the other hand, the obligation ‘to ensure’ puts an affirmative duty on the states to take whatever measures necessary to enable individuals to enjoy and exercise these rights. It follows that there is an obligation on states parties to the Covenant, to give effect to these rights through domestic legal measures. States must take affirmative action and see to it that everything is done to enable the individuals to enjoy and exercise these rights, including the right to life, which is the main focus.

On the whole this obligation may be characterized as an obligation of result and not an obligation of conduct, as it does not give any indication of the means to achieve this result. To give effect to the right to life, a state must firstly, prevent its violation. This entails avoidance and prevention.¹²

The Zambian government has partially fulfilled this obligation with respect to the traditional definition of the right to life. It has enacted law in section 200 of the Penal Code, which prohibits the unlawful deprivation of life. This section provides that:

“Any person who of malice aforethought causes the death of another by an unlawful act is guilty of murder.”

¹² Ramcharan – Supra note 2

However, this is not enough because it does not cater for the broad definition of the right to life.

Secondly, the right to life is given effect by affording remedies for its violation. Clear and specific legal remedies are needed in order to give effect to the right to life whenever it is violated.¹³

The practice of the HRC and of the Inter-American Commission on Human Rights also highlighted on the meaning of the terms 'to respect and to ensure.' In the General Comment on Article 2 of the ICCPR, the HRC has observed that Article 2 of the Covenant generally leaves it to the states parties concerned to choose their method of implementation in their territories within the framework set out in that article.

It recognizes that the implementation does not solely depend on constitutional or legislative enactments, which in themselves are often not sufficient. State parties must also ensure the enjoyment of the right to life by all individuals under their jurisdiction. This aspect calls for specific activities by the states parties to enable individuals enjoy their right to life. The HRC notes that it would be desirable for states parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

¹³ Ibid

1.6 Summary

Over the past years, there has been a change in society whereas innocent children, men and women die because they have no access to survival requirements, lack of necessities and disease. Such high death rates are reflected in the low life expectancy. What is the role of law amidst such changes? It is no longer adequate to interpret the right to life in the traditional view of 'thou shalt not kill.' The right to life must be interpreted in the broad sense, which will encompass the changes in society that deprive people of their life.

However, the broad sense is not self-implementing, it calls upon the Zambian state to take any measures to prevent further violation of the right to life and positive measures to ensure the enjoyment of the right to life. The fulfillment of such obligation shall be analyzed in the subsequent chapters.