

## **THE CONCEPT OF RIGHT TO LIFE UNDER THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA: A CASE STUDY OF BORNO STATE UNDER THE STATE OF EMERGENCY RULE**

By:

Yahaya Alhaji Dunoma \*

Musa Alkali Lawan \*\*

Bukar Alhaji Maina \*\*\*

### **ABSTRACT**

The concept right to life is a sacred right which every human being by virtue of his creation is entitled to and by all standard it is sacrosanct and cannot whimsically be violated except with due recourse to the law. The Universal Charters and Conventions have not provided for its violation during war and peace. Despite being sacred, domestic laws have opened a floodgate for its violation under certain situations when martial laws are imposed to avert breakdown of law and order. The Constitution of the Federal Republic of Nigeria at Section 33(2) has provided for such instances where this golden right has to be infringed for peace, order and stability of the Nation. The case of Borno State under State of Emergency has provided a myriad of questions which the available answers are not satisfactory enough to justify the wanton killings and maiming carried out under the guise of Emergency powers. This paper will look at the powers imposed and the constitutional backings relied upon by all the stakeholders involved in the process.

### **1.0 INTRODUCTION:**

The right to life is a fundamental human right, central to the enjoyment of all other human rights. Regional and International laws recognizes this basic right as accruing to every individual at birth. To this end, the 1999 constitution of the Federal Republic of Nigeria provides;

“Every person has a right to life, and no one shall be deprived intentionally of his right to 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....”<sup>1</sup>

Furthermore, the African Charter on Human and Peoples’ Rights is to the effect that: “Human rights 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”<sup>2</sup> While, the International Convention on Civil and Political Rights provides:

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\*Lecturer, Department of Language and Liberal Studies, Ramat Polytechnic, Maiduguri.

\*\*Lecturer, Department of Civil Law, Mohammed Goni College of Legal and Islamic Studies, Maiduguri.

\*\*\*Lecturer, Department of Sharia and Civil Law, Mohammed Goni College of Legal and Islamic Studies, Maiduguri.

<sup>1</sup> Section 33 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

<sup>2</sup> Article 4 of the African Charter on Human and Peoples Right, 1986

“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.”<sup>3</sup>

Also under the Islamic law, Allah (SWT) has forbidding the killing of human being without a just cause. To this, the Holy Quran provided that:

“...kill not the life which Allah has forbidden, except for a just cause” (according to Islamic Law)<sup>4</sup>

Despite the protection for the right to life provided for by national, regional, religious and international instruments, cases of extra-judicial, summary and arbitrary executions by Army, police and other law enforcement agencies are still prevalent in Nigeria, more particular with the Proclamation of a State of Emergency by President Good luck Ebele Jonathan on the 14<sup>th</sup> May, 2013 as a result of Boko Haram insurgency in the North-eastern part of the country which many people were arrested, detained without being taken to court for trial, and further denial of access to legal counsel, others were extra-judicially killed, some died while in detention because of congested cells and lack of medical attention being given to them which amounted to violations of their right to life. The period of the state of emergency<sup>5</sup> imposed by President Goodluck Ebele Jonathan on three states in the North-eastern part of Nigeria which includes Borno, Adamawa and Yobe states had significantly been characterized by abuses of human rights more particularly the right to life which is constitutionally guaranteed yet it has been violated by the so called Joint Task Force (JTF) in its death camp popularly known as Giwa Barracks within Maiduguri, the capital city of Borno State, Nigeria.

In this paper, part one contains introduction, part two considers what is right to life and the instances of its violation, part three seeks to examine the concept of right to life under domestic, regional and international laws, part four will consider state of emergency, powers of the President and its limitations under the 1999 Constitution of the Federal Republic Nigeria, part five the conclusion.

Keywords are:- Rights, Life, Killings, State of Emergency, Fundamental Human Rights, Violations, *Boko Haram*, Joint Task Force (J.T.F), Universal Declaration of Human Rights (UDHR), African Charter on Human and People Rights (ACHPR) and 1999 Constitution of the Federal Republic of Nigeria (as amended).

## 2.0 RIGHT TO LIFE AND INSTANCES OF ITS VIOLATION

The constitution of the Federal republic of Nigeria has provided that:

“Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of court in respect of a criminal offence of which he has been found guilty in Nigeria.”<sup>6</sup>

The above section suggests that under no circumstances that any person, state or law enforcement agency shall have power to kill or execute any person except with due process of law, as such subsection (2) of section 33 provide as follows:

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<sup>3</sup> Article 6 of the Covenant on Civil and Political Rights, 1966

<sup>4</sup> Quran 6: 151.

<sup>5</sup> Section 45 (3) provides this meaning, “any period during which there is in force a proclamation of a state of emergency declared by the president in exercise of the powers conferred on him under section 305 of this constitution,”

<sup>6</sup> S.33(1) of the Constitution Federal Republic of Nigeria,1999.(As Amended)

“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 defense of any person from unlawful violence or for the defense of property;
- b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- c) For the purpose of suppressing a riot, insurrection or mutiny.”<sup>7</sup>

Therefore, to understand life is to understand death.<sup>8</sup> For both are inextricably related. Only a fool, fight to die, the wise fights to live. For he who fights and run away, live to fight another day.<sup>9</sup> Therefore, the right to life presupposes the existence and availability of all 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.<sup>10</sup>

In *Kalu v. State*,<sup>11</sup> the Supreme Court of Nigeria stated that the right to life in Nigerian law is not absolute but qualified. While on this; life is sacrosanct and deliberate killing is abhorred in all society of the world over.<sup>12</sup> What this provision means is that everyone is entitled to respect for his or her life and safety. Police officers or soldiers may not resort to lethal force such as firing live ammunition at people unless their own lives or the lives of others are in immediate danger, and less extreme measures are not available to avert the danger.

The constitution however recognizes some exception to the rule relating to preservation of life... the blanket derogation from the right in matters relating to defence of property and killing of a suspect who resist arrest may need to be reviewed if life is to have any real meaning...<sup>13</sup>

Equally, in *Aliu Bello and Ors v. Attorney General of Oyo State*,<sup>14</sup> this case arose as a result of the unlawful execution of one Nasiru Bello. Nasiru had been convicted of armed robbery by the High Court of Oyo State and sentenced to death. He filed an appeal against his conviction while his appeal was still pending before the Court of Appeal, the A.G. of the State recommended his execution and this was duly carried out. An action for damages was brought by his dependents. The trial court declared the execution illegal and this was confirmed by the Court of Appeal and later by the Supreme Court which also held that the premature execution constituted an infringement of the deceased fundamental right to life.<sup>15</sup>

Meanwhile, in *Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited*,<sup>16</sup> the plaintiff, Mr. Gbemre of Iweherekan Community of Delta State, Nigeria sued Shell Nigeria, NNPC and the A.G. of the Federation on the following claims:

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<sup>7</sup> *Ibid*

<sup>8</sup> Aduba N. J., *The Concept Right to Life under Nigerian Constitution: The Law, Court and Reality*, (Nigerian Institute of Advanced Legal Studies, Lagos, Nigeria) (2011) Page 3.

<sup>9</sup> Uchegbu S., “*the Concept of Right to Life under Nigeria Constitution*.” An Essay in Honour of Justice T.O. Elias Edited by J.A. Omotola Page 136.

<sup>10</sup> *Ibid* pp. 151-152.

<sup>11</sup> (1998) 13 N.W.L.R. (Pt.583) page 531.

<sup>12</sup> Aduba N. J. op. cit. Pages 4-5

<sup>13</sup> *Ibid*.

<sup>14</sup> (1986)12 S.C 1

<sup>15</sup> See also *Maiyaki v. The State* (2008) All FWLR (PT440) 618.

<sup>16</sup> Unreported case No. FHC/B/CS/53/05 Federal High Benin Judicial Division. 14<sup>th</sup> November, 2005.

“A declaration that his constitutionally guaranteed fundamental right to life and dignity of human person provided in sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria 1999... inevitably includes the right to clean, poison free, pollution free and healthy environment.”

The Court declared that the actions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents in continuing to flare gas in the course of their oil exploration and production activities in the applicant community was a violation of their fundamental right to life (including healthy environment) and dignity of human person guaranteed by the constitution and the African Charter. The court further declared that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents i.e. Shell and NNPC were to be restrained from further flaring of gas in the Applicant’s community and were to take immediate steps to stop further flaring of gas in the plaintiff’s community.<sup>17</sup>

The *Boko Haram* religious sect like *Maitesine* sect of the 1980’s erupted with heavy casualties in Adamawa, Borno and Yobe States in North Eastern part of Nigeria. Hence the weakness of the Nigeria Police Force to tackle the situation without escalation was exploited by socio-economic, ethnic and religious warlords. Although, the military was invited and was able to quell the crisis, the toll in human life was enormous, thousands of lives were lost, and thousands of people are currently internally displaced in their own country, the damage to property runs in billions in terms of cost.<sup>18</sup>

A hundreds of people accused of having links to *Boko Haram* have been arbitrarily detained by the Joint Task Force (JTF)<sup>19</sup>, Police and State Security Service (SSS).<sup>20</sup> In many of the cases they remained in detention for lengthy periods without charge or trial, without proper notification of family members, without being brought before any judicial authority and without access to lawyers or the outside world.<sup>21</sup>

For example, *A.A.*, a 32 year old trader, was arrested by members of the JTF on 15<sup>th</sup> May, 2012 as he was about to close his shop for the day. He was taking to NEPA Monday Market Area Maiduguri as JTF base Police Station cell where A.A. was detained. His father planned to go and check when someone riding a tricycle told him that, he saw three dead bodies dumped by roadside and one of them resembles your son. His father went there and saw his son’s dead body..... I am looking for justice for my son’s killing, without a trial it is great injustice to his family and me.<sup>22</sup>

The life as being paramount element of human existence cannot be taken away from man except under the circumstances legally permitted by the law, otherwise any act of execution of human life without just cause is tantamount to deprivation of such precious gift of man as a human being even under the circumstances noted, precaution must have been made before any excusable form of executions.

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<sup>17</sup> *Ibid.*

<sup>18</sup> Aduba N.J. Op cit page 28.

<sup>19</sup> Joint Task Force of Military officers and all other Paramilitary officers like Police, Immigration, Custom, State Security, military Intelligence Officers etc

<sup>20</sup> Amnesty International Report, *Nigeria: “Trapped in the cycle of violence”*, (2012) Page 18.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid* Page 23.

### **3.0 THE CONCEPT RIGHT TO LIFE UNDER DOMESTIC, REGIONAL AND INTERNATIONAL LAWS**

Right to life is the keystone of all the rights and by virtue of being that domestic, regional and international laws have placed the right as the first right which all the remaining rights hinges on. Every single right a human being is entitled to predicate on his existence as a human person. A person no longer living has no right under the law therefore, this right is supreme.

#### **3.1 INTERNATIONAL LEVELS:**

The first giant step taken by governments across the world to recognize the right to live through a conventional Charter was in 1948 when the Universal Declaration on Human Rights (UDHR) was adopted by all member states present before it was incorporated into many constitutions world over as a mechanism through which the sanctity of human person is uphold by all.

The right despite being a natural right received blessing when it was first declared as a right every human being by virtue of his existence as one is entitled. The UDHR provides that every human being is entitled to right to life and personal security<sup>23</sup> and no such right will be taken away by any means except recourse has been made to any law made in a democratic means or society. The UDHR is the most potent weapon that safeguards human sanctity and value in this contemporary life. It has indeed made it possible for other Conventions, Charters and Protocols across the world more particularly at Continental levels to protect, preserve and safeguard the sanctity of human beings.

#### **3.2 CONTINENTAL OR REGIONAL LEVELS:**

At continental level, the concept right to life has been regarded as a must by most countries who believed that mankind must exist against all odds irrespective of where he lives and what does he do for living since that right is natural in nature and therefore cannot be compromise. The continents of America, Europe and Africa have excelled in making it a right which every individual is entitled. Since our case study is Borno State of Nigeria, we will look at the concept at African level.

In 1986, the continent of Africa brought into being the Charter more precisely called the African Charter on Human and Peoples Right (ACHPR), 1986. The Charter has provided for the right to life which everyone living within the shores of Africa must enjoy irrespective of where he lives in the continent and under no circumstances will that right be taken away.<sup>24</sup> Governments and their agencies must strive very hard to see that that right is protected and safeguard. To this end, almost all member states have domesticated this Charter in their domestic laws to show their seriousness.

#### **3.3 DOMESTIC LEVELS:**

The concept right to life has found its way into the constitution of Nigeria in 1979. The right is put first before other rights which are secondary to it and can only be enforce when one is alive. The right is not absolute but can only be violated with reason and no otherwise. The right to life as a concept in Nigeria predates the Charter. In 1999, a more democratic constitution was born which provided for the right to live in Nigeria as a matter of law and not privilege. Section 33 of the constitution at its face value is absolute but gave room for derogation with reason. The blank cheque given to the authority laid foundation for extra-judicial killings by those so-

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<sup>23</sup> Article 3 of Universal Declaration of Human Rights, 10 December, 1948.

<sup>24</sup> Article 4 of African Charter on Human People Right, 1986

called authorized to bring law and order in the country. Most of the killings were done citing Section 33 (2) as a defense or justification for the act which if carefully appraised would be a premeditated murder.

The concept of right to life despite being a right with no substitute has been subjected to all forms of violations more particularly in Borno being the epic-center and the headquarters of the dreaded sect called *Boko Haram*. Both the government and the Sect have committed wanton violations of this sacred life which has no spare and cannot be replaced once lost. The massacre of Baga perpetrated by both, the overrunning of Bama on the 1<sup>st</sup> day of September, 2014, the break of Giwa Barracks and its aftermath where many captives who have no link with *Boko Haram* were summarily executed by all stakeholders including civilians who have no any legal backing to carry out executions and many instances where Soldiers will execute alleged members of *Boko Haram* who were captured without any resistance. Right to life is however universally acclaimed and recognized as the first of all the rights and cannot be compromise. It is a right above all and must be protected by both government and individuals.

#### 4.0 STATE OF EMERGENCY AND POWERS OF THE PRESIDENT AND IT'S LIMITATIONS UNDER THE CONSTITUTION

A state of emergency is a governmental declaration that may suspend some normal functions of the executive, legislative and judicial powers, alert the citizens to change their normal behavior or order government agencies to implement emergency preparedness plans. A government can declare a state of emergency during a time of natural or human –made disaster, during a period of unrest, or following a declaration of war or situation of international/internal armed conflict *justitum* is its equivalent in Roman law.<sup>25</sup>

It can also be used as a rational for suspending rights and freedoms guaranteed under a constitution or basic law. The procedure for doing so varies from one country to another. Under international law, rights and freedoms may be suspended during a state of emergency, for example, a government can detain persons and hold them without trial. All rights can be derogated from are listed in the International Covenant for Civil and Political Rights. Some sources argued that non- derogatory rights cannot be suspended.<sup>26</sup> However, emergency law does not and cannot override non-derogatory rights during a state of emergency without cogent and convincing reason in law and right to life is one of such rights.<sup>27</sup>

In Nigeria, we have had the imposition of the emergency rule by the Federal Government in some parts of the country in recent times. For instance, a state of emergency was imposed in states like Borno, Yobe and Adamawa on the 14<sup>th</sup> May-2013 as a result of sporadic terror attacks by *Boko Haram*.

The Nigerian constitution provides for the proclamation and imposition of a state of emergency covering the whole country or in some part of it. This particular section empowers the President to issue a proclamation of a state of emergency by way of official Gazette. And the section provides that<sup>28</sup>:

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<sup>25</sup> <<http://www.wikipedia,the free encyclopedia>> visited on 12 May 12, 2015 at 1:30 pm

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> Section 305 of the Constitution of the Federal Republic of Nigeria, 1999. (as Amended)

“Subject to the provisions of the constitution, the President may by instrument published in the official Gazette of the Government of the Federation issue a proclamation of a state of emergency in any Federation or any part thereof.”<sup>29</sup>

Furthermore, subsection [3] states that the president shall have power to issue a proclamation of a state of emergency only when:

1. The Federation is at war,
2. The Federation is in imminent danger of invasion or involvement in a state of war,
3. There is actual breakdown of public order and public safety in the federation or any part thereof to such extent as to require extraordinary measure to restore peace and security,
4. There is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert such danger,
5. There is an occurrence or imminent danger or the occurrence of any disaster or natural calamity, affecting the community or a section of community in the Federation,
6. There is any other public danger which clearly constitutes a threat to the existence of the Federation,
7. The president receives a request to do so in accordance with the provisions of subsection [4] of this section.<sup>30</sup>

It is of paramount important to note that in declaring a state of emergency, the President must do so with the approval of the National Assembly. This section 305 [2]<sup>31</sup> is to the effect that:

The President shall immediately after the publication, transmit copies of the Gazette of the Government of the Federation containing the proclamation including the details of the emergency to the president of the Senate and the Speaker House of Representatives, each of whom shall forthwith convene or arrange for a meeting of the House of which he is President of the Senate or the Speaker of the House of Representative, as the case may be, to consider the situation and the circumstances and decide as to whether or not to pass a resolution approving the proclamation or not. This provision is very important because it curtailed an abuse of such power by the President and it also makes it an avenue to consider the state of the nation affairs and possible way of remedying it.

The governor of a state may also request the President to declare a state of emergence in his state or some part of his state that is been affected by the problem as provided under section 305 [ 4]<sup>32</sup> of the constitution, but in this regard the Governor of a state may with the sanction of a resolution supported by two-thirds majority of the House of Assembly, requesting the President to issue a proclamation of a state of emergency in the state when there is in existence within the state any of the situations specified in section 305 subsection [3] [c] and [e] of such section does not extend beyond the boundaries of the state<sup>33</sup> This section clearly shows that the power of the President on a state of emergency is subject to the conditions aforementioned

<sup>29</sup> The Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

<sup>30</sup> *Ibid*

<sup>31</sup> *Ibid*

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*

under section 305 [3] of the Constitution, anything short of that the President has no constitutional powers to proclaim and impose a state of emergency.

The rationale for the imposition of a state of emergency is to curtail any imminent danger to the federation or any part of it, be it natural or man-made disaster. But unfortunately the imposition of a state of emergency in the affected part of Borno, Yobe and Adamawa has led to a lot of human rights abuses by the law enforcement agencies more particularly the military. The violation of human rights ranges from extra-judicial killings and summary executions of innocent persons. There are no circumstances in which international law allows authorities to kill someone who is already in their custody or otherwise under their control in the absence of a trial which fully meets international standards of fairness.<sup>34</sup> To execute a person in such circumstances is a form of extra-judicial or summary execution, and constitutes a crime under national and international law for which those responsible must be brought to justice.<sup>35</sup> Amnesty International interviewed several people and saw people who are not threat to life, unarmed, lying down or with their hands over their head and cooperating with the security forces were shot at close range by the security forces.<sup>36</sup>

On the 7-July-2011, at around 8pm there was an explosion near Joint Task Force (JTF)<sup>37</sup> vehicle in Kaleri, Maiduguri. Most of the men in the community were in the mosque and the women were in their houses. According to residents, JTF soldiers blocked roads in the area preventing anyone from entering or exiting. The soldiers entered approximately 20 houses, searching them and bringing out residents who were made to lie on the ground. The JTF set fire to homes, cars and motorcycles. Several men found inside the houses were shot dead. At least 18 men are believed to have been killed.<sup>38</sup>

Also, issues of Enforced Disappearance was reported by the Amnesty International, Enforced Disappearance:-

“is the arrest, detention, abduction or other form of unauthorized deprivation of liberty of a person by a state, agents acting for the state, or persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by a refusal to acknowledge the deprivation of the liberty or by concealment of the person’s fate or whereabouts, placing him or her outside the protection of the law.”<sup>39</sup>

An Enforced Disappearance is a serious violation of human rights and facilitates a range of other violations, including torture and extrajudicial executions. Enforced Disappearances are explicitly prohibited under the International Convention for the Protection of All Persons from Enforced Disappearance, which entered into force on 23 December 2010 and which was acceded to by Nigeria on 27 July 2009. The Convention also imposes legal obligations on states to ensure all those responsible for enforced disappearances are brought to justice, to take a range of measures to prevent enforced disappearances, including by maintaining records of all persons deprived of liberty and guaranteeing that family members, lawyers and others have access to such information, including the ability to compel it through a prompt judicial

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<sup>34</sup> See United Nations “Principles on the Effective Prevention and Investigation of Extra-Judicial, Arbitrary and Summary Executions” vol. 46, 1989, “Recommended by Economic and Social Council Resolution of 1989” page 34.

<sup>35</sup> Ibid

<sup>36</sup> Amnesty International Report, *Op Cit*, Page 25

<sup>37</sup> Joint Task Force *Op. cit*.

<sup>38</sup> Amnesty International Report, *Op.cit* Page 26.

<sup>39</sup> *Ibid* at p 27.



procedure, and to guarantee and fulfill the rights of victims of enforced disappearance including the family members of those who have disappeared.<sup>40</sup>

Despite Nigeria is a signatory to the above Convention, but it refused to adhere strictly to the rules of the Convention, this can be seen with regards to the case of **Goni Ali** who was arrested by the J.T.F at his home in Maiduguri with three others on 16 October, 2011. They were taken to Giwa barracks, 21 Army Brigade. Two of the men arrested with him were released the following day and the third was released four days later. But in the case of Goni Ali nothing was heard from army and whenever inquired as where about of him by his family the only responds to them by the military was that they don't know.<sup>41</sup>

## 5.0 CONCLUSION:

The most precious gift God has given mankind is a life for his existence as a human being on earth therefore both national and international laws have protected and guaranteed this right to life however circumstances may warrant the killing or rather execution of human life at the time of resisting arrest, escaping from lawful custody, exchanging fires in war and to mentioned just but a few are excusable means of taking human life in Nigeria.

The President of the Federal Republic of Nigeria has power to imposed a State of Emergency in any part of the country when that part is at war, or any natural phenomena like flooding, earthquake and so on for the protection of lives and property of the citizenry yet the relevant authorities charge with the responsibility of protecting the lives and property of the people have turn out to be the violates of such rights by not adhering strictly to the standard or rather rules of engagement thereby omitted or committed so many atrocities such as impunities, extrajudicial execution, unlawful detention, forced disappearance and the like.

Borno state is one of the states that are seriously affected by insurgency and for third terms, state of emergency has been imposed amongst other states of the Federation where Joint Task Force popularly known as J.T.F. had violated many Nigerian's right to life under the guise of ending terror attacks of the insurgence better known as *Boko Haram*. Though they have power to do so under the 1999 Constitution of the Federal republic of Nigeria but such powers must be exercised with precautions in line with the national and international best practices of curtailing insurgences and arms conflicts in whatever situation so as to protect, safeguard and guarantee human life of the innocent citizens.

Despite all the machineries put on ground, people of Borno State had suffered series of killings by Insurgence and the JTF on the innocent civilians under the pretends of a state of emergency and curfew as giving them absolute power to do anything while the African Charter, Universal Declaration and the 1999, constitution have clearly provided for the protections, safeguarding and maintenance of human and people's right to life. As such, the blue card derogation from the powers in matters relating to escaping from custody and killing of a suspect who resist arrest may need to be reviewed if life is to have any real meaning as well as lengthy detention without trial need to be avoided no matter the gravity of the crime committed by suspects in whatever situation.

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<sup>40</sup> *Ibid*

<sup>41</sup> *Ibid*