

## The Effect of Insurgency on the Right to Life in Nigeria

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### Abstract

Over the years, insurgency in various parts of the world and its effect on world order has been on the rise. It is a vice that is generally felt universally and no country in the world is immune to it. Nigeria is one of the nation's grossly plagued by this rising evil ranging from acts of boko haram activists to those of bandits, killer herdsmen and other militant groups all of whose actions are adversely felt in all parts of the country and affecting all areas (economic, political, social, cultural, and religious areas) of the society. Insurgency as a crime against public order is usually carried out in an attempt to pass a strong message to the government or fight against a norm in society. This study examines the effect of insurgency attacks on the right to life in Nigeria by adopting the doctrinal method of research. It finds that the level of insecurity in Nigeria caused by insurgency attacks, has made the life of residents especially those living in highly affected zones vulnerable to constant threats and dangers that affect the quality of life as well as actual loss of life. It is based on this that we propose that the government creates an effective system of administration of justice able to investigate, punish and repair any deprivation of lives by insurgents and to protect the right to life from not being prevented from access to conditions that may guarantee a decent life.

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## Background to the Study

Insurgency and its effects are prevalent in the world that no country is completely absolved from its effect. It has become a frightening phenomenon and a concern for many governments and citizens around the world thereby, drawing much attention to the vulnerability of modern societies.<sup>1</sup> Since the early part of 2009<sup>2</sup>, the Nigerian society has been under serious attacks from the activities of insurgents. The most disturbing of them being the Boko Haram<sup>3</sup> and the Islamic State's West African Province (ISWAP)<sup>4</sup> attacks in the north eastern part of the country. Others include the herdsmen<sup>5</sup> attacks on communities in all regions of the country, cattle rustling and farmers conflict<sup>6</sup> also mostly in the northern part of the country, militancy<sup>7</sup> from the marginalized ethnic groups of the Niger Delta region, clashes with the Shiite Islamic Movement of Nigeria<sup>8</sup> and the campaign launched by the pro-Biafra group known as the Indigenous People of Biafra (IPOB)<sup>9</sup>.

These attacks have led to ills and misfortunes including violent and mass killings, displacement of persons, wanton destruction of properties, kidnappings, rape, assault, bunkering, and many other associated evils causing restiveness, abandonment, agitations, and other forms of civil unrests as the most frightening of all these megalomaniacs.<sup>10</sup>

Insurgency attacks have the tendency of undermining civil society, jeopardizing peace and security, threatening social and economic development, and negatively affecting the enjoyment of many human rights.<sup>11</sup> They therefore, have a direct effect on the enjoyment of most human rights and especially the right to life. The right to life is so intricate that other human rights are in one way or the other, immersed in it. These rights range from the rights to liberty, freedom of movement, freedom of religion, freedom of expression, freedom against torture and other cruel, inhuman or degrading treatment to the rights to healthy environment, healthcare, food, shelter and education. The Constitution of the Federal Republic of Nigeria, 1999 (as Amended)<sup>12</sup> and the African Charter on Human and Peoples (Ratification and Enforcement) Act<sup>13</sup> guarantee the right to life. These outbreaks of

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<sup>1</sup> AMajekodunmi, 'Terrorism and Counter-Terrorism in Contemporary Nigeria: Understanding the Emerging Trends'. [2015] (9) (4) *Journal of Policy and Development Studies*, 128.

<sup>2</sup>B. Kendhammer, *Muslims Talking Politics: Framing Islam, Democracy, and Law in Northern Nigeria* (Chicago: University of Chicago, 2016).

<sup>3</sup> basically, fighting against the inculcation of western education

<sup>4</sup> Also, a breakout faction of boko haram establishing links with ISIS and trying to establish an Islamic state in Nigeria

<sup>5</sup> attempting to establish grazing lands

<sup>6</sup> Which conflicts also exist to establish agricultural conquest

<sup>7</sup> Conflicts arising as a result of the agitation for true federalism and resource control and mostly taking the form of pipeline vandalism, oil bunkering and kidnaping for ransom.

<sup>8</sup> Challenging state orchestrated violence against its members

<sup>9</sup> for the secession from the Federal republic of Nigeria

<sup>10</sup> Mevayerore Daniel Igbini, 'Insurgency in Nigeria: The Prognosis and its Effects on the Nigerian Politics' [2020] (13) (2) *AUDRI* <<https://dj.univ-danubius.ro/index.php/JDSR/article/view/567/838>> accessed 9<sup>th</sup> December 2021

<sup>11</sup> The report of the Secretariat of the Human Rights Council Advisory Committee to the OHCHR- United Nations Office at Geneva of the Effects of Terrorism on the Enjoyment of All Human Rights in Nigeria

<sup>12</sup> CFRN

<sup>13</sup> Cap 10 LFN 1990

violence caused by insurgency attacks pose a direct challenge to lives of the citizens and residents of Nigeria. Aside from the direct and indirect effects that these attacks have on the right to life, they may also result to crisis and give rise to an unmanageable flow of refugees into various countries and whose right to life cannot be guaranteed in the cause of their flight. It is against this backdrop that this study is carried out to examine insurgency attacks in Nigeria and how the attacks affect the right to life of Nigerians. The research is divided into six parts for proper analysis, makes findings and proffers solutions at the end.

## **Definition of Terms**

### **Effect**

An effect is a noun used to denote a consequence, an outcome, a result, or an influence. It may be defined as a change that is caused in a person or thing by another person or thing.<sup>14</sup> It may also mean a change that occurs when something is done or when something happens. In other words, it is something that inevitably follows an antecedent.

### **Insurgency**

Insurgency may be defined as an uprising or rebellion by an organized group against their government or governing authority.<sup>15</sup> It may also mean an active revolt and other terms used to describe situations of insurgency, include; uprising, rebellion, and insurrection.<sup>16</sup> It could best be understood by first considering what it is not. Insurgency is not terrorism, subversion, guerrilla war, conventional war, revolution, coup d'état, although some insurgent groups have adopted some of these methods in the achievement of their goals.<sup>17</sup> However, terrorism has become the fundamental tactics frequently adopted by insurgents. Terrorism in the modern usage is connected with a certain kind of violent action carried out by individuals and groups rather than by the states and with events which take place in peace time rather than as part of conventional war.<sup>18</sup> As a strategy of terrorism, insurgency involves the adoption of some methods to achieve its goals. These include bombing, guerrilla warfare, kidnapping and abduction. This suggests that insurgency regularly use terrorism to pursue the goals of the political movement because an insurgency is merely a movement- a political effort with a particular objective.<sup>19</sup>

Insurgency is a violent, armed rebellion against authority waged by small, lightly armed bands who practice guerilla warfare from primarily rural base areas.<sup>20</sup> The key descriptive feature of insurgency is its asymmetric nature: small irregular forces face the state's large,

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<sup>14</sup> J Sinclair, *Collins Cobuild Dictionary* (HarperCollins Publishers, 1990) 451

<sup>15</sup> E Crawford, 'Insurgency' (Oxford University Press, 2023) Available at <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e308>> accessed on the 9<sup>th</sup> of Jan., 2023.

<sup>16</sup> Ibid

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Lewis Janet I, *How Insurgency Begins: Rebel Group Formation in Uganda and Beyond* (Cambridge University Press 2020) 17-18.

well-equipped, regular military. Due to this asymmetry, insurgents avoid large-scale direct battles, opting instead to blend in with the civilian population (mainly in countryside) where they gradually expend territorial control and military forces. Insurgency frequently hinge on control of and collaboration with local populations.<sup>21</sup>

Insurgencies, having a politico-military nature, use social, political and economic means, in addition to military efforts in their broader political campaign. The principal strategy for insurgencies is the use of violence within the context of direct, armed struggle in asymmetric modes of warfare for political claim making. Given their politico-military characteristics, insurgents directly challenge the political authority with the leading instrument of a political campaign and the supplementary instrument of a military campaign in a civil war context.<sup>22</sup> Insurgencies directly oppose the state's authority and challenge the regime through politico-military actions intended to weaken the control of a constituted government through an organized protracted war.<sup>23</sup> The main objective of insurgency is to challenge the existing government for control and it requires the active support of some segment of the population. Insurgencies do not happen if the population either supports the government or sees nothing to gain from fighting. Insurgency is based on the selective use of violence against people or groups who do not comply politically with the wishes of rebels or the government. The first victims of rebel action in an insurgency are potential government collaborators, often the moderators in the community. While the government's violence is also intended to be applied selectively against those who support the rebels, it is usually less discriminatory because of the lack of local knowledge. The government's initial actions are likely to appear more “terroristic” (hence, state terrorism) but usually with its investment in intelligence gathering and political mobilization, the information battle becomes more even.<sup>24</sup>

Insurgency poses a threat to national security, however, it should be noted that the concept of national security, in the post-cold war era, has gone beyond securing lives and properties of the people through the protection of territorial integrity of the state against threats of external aggressors to encompass the protecting of citizens from the threats of diseases, hunger, unemployment, violation of human rights, displacements and shelter problems, conflict, political repression and environmental degradation, hence, human security. Violent activities which has intensified in recent times has largely undermined human security.<sup>25</sup> Due to the blending of insurgent with the civilian population, insurgencies tend to involve considerable violence against civilians (by the state and the insurgents).<sup>26</sup> State attempts to quell insurgencies frequently lead to the infliction of indiscriminate violence, whereas rebel control of territory frequently involves violence

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<sup>21</sup> Wikipedia, “Insurgency” <<https://en.m.wikipedia.org/wiki/insurgency>> accessed 9<sup>th</sup> December 2021

<sup>22</sup>Mustafa CosarUnal, 'Terrorism Versus Insurgency: A conceptual Analysis' *Crime Law Soc Change*<DOI 1.1007/s10611-015-9601-7> accessed 14<sup>th</sup> November 2021.

<sup>23</sup> Ibid

<sup>24</sup> Kocher, Matthew Adam and Pepinsky, Thomas B and Kalyvas. Stathis N 'Aerial Bombing and Counterinsurgency in the Vietnam War' . (2011) 55 (2) *American Journal of Political Science*<201-218. Doi10.1111/j.1540-5907.2010.00498.> ISSN 1540-5907.

<sup>25</sup>Nneka Sophie Amalu, 'Impact of Boko Haram Insurgency on Human Security in Nigeria' (2015) (14) *Global Journal of Social Sciences*, 35-36.

<sup>26</sup> Ibid.

against the civilian population. An insurgency can be fought through counter insurgency warfare, as well as other political, economic and social actions of various kinds.<sup>27</sup>

### **Right to Life**

The right to life is guaranteed by both the Universal Declaration of Human Rights<sup>28</sup> as well as the International Covenants on Civil and Political Rights<sup>29</sup> reiterating that every human being has an inherent right to life which shall be protected by law and not arbitrarily deprived. The right to life encompasses a wide variety of other rights which are dependent on the existence of life for their enjoyment; it is the nucleus of all other rights. No democratic society can function without guarantees and protection of the human right to life.

The right to life is a bundle of rights which are available, not only for the prevention of unlawful deprivation of life, but also for the sustenance of life. The right to life would be meaningless, if it is only relevant to a life that has not been deprived. On this basis, many countries have made not just the right to life justiciable, but all other rights that give it meaning like the right to healthcare, good environment, housing, means of sustenance and others. In Nigeria, this interpretation has not gained much meaning because while the right to life is justiciable, the other mentioned rights only apply as directive principles of state policy. The Constitution Federal Republic of Nigeria, 1999 (as Amended),<sup>30</sup> has already provided that 'no one shall be deprived intentionally of his life'<sup>31</sup> making it implied that remedies of the section arise only within the incident of unlawful deprivation of life<sup>32</sup> and not directly imposing a positive duty on the government to provide safe and good infrastructure that guarantees an assured and dignified life to the citizenry.<sup>33</sup>

### **The Right to Life in Nigeria**

In Nigeria, human life is so revered that it has been protected by two legislations namely; the Constitution of the Federal Republic of Nigeria<sup>34</sup> (the Constitution) as well as the African Charter on Human and Peoples Right Ratification and Enforcement Act (African Charter).<sup>35</sup>

Section 33 of the Constitution<sup>36</sup> provides that

- (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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<sup>27</sup> Ibid.

<sup>28</sup> Article 3, UDHR

<sup>29</sup> Article 6 ICCPR

<sup>30</sup> CFRN

<sup>31</sup> Section 33(1)

<sup>32</sup> Enabulele, A, 'The Right to Life or The Right to Compensation Upon Death' 100

<<http://www.ajol.info/index.php/jsdlp/article/viewFile/122618/112166>> accessed on the 15<sup>th</sup> of September, 2016

<sup>33</sup> Ibid 101

<sup>34</sup> 1999 (as amended) (CFRN 1999)

<sup>35</sup> 1981

<sup>36</sup> CFRN 1999

- (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 to or to prevent the escape of a person lawfully detained; or
  - (c) For the purpose of suppressing a riot, insurrection or mutiny

Article 4 of African Charter 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 his right'.

From the above provision of the Constitution and the African Charter, it can be deduced that human life is regarded as sacred in Nigeria and no one is allowed to take the life of another except as provided in section 33(2) of the Constitution.<sup>37</sup> The Supreme Court in the case of *Kalu v State*<sup>38</sup> stated that life in Nigerian law is not absolute but qualified. Agomo<sup>39</sup> commented on this provision of section 33(2) of the Constitution<sup>40</sup> and said that life is sacrosanct and deliberate killing is abhorred in all societies in the world over. 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 defense of property and killing of a suspect who resist arrest may need to be reviewed if life is to have any real meaning.<sup>41</sup>

Olomojobi<sup>42</sup> in his book stated that the provision of 33 (2) (a)<sup>43</sup> is unwarranted with respect to riots and has served as a passport for security operatives to take innocent lives. Many students and other protesters in Nigeria have lost their lives in the process and the police and other security agencies find justification under this constitutional provision. He suggested that this provision should be expunged from the Constitution as it provides a fine cloak for trigger-hungry police officers to intimidate and take the lives of innocent and law-abiding citizens of Nigeria. In relation to insurrection or mutiny, he stated that the security and integrity of the state is under threat and it makes it reasonable for death arising from such incidents to be justifiable. He further stated that there is no reasonable

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<sup>37</sup> CFRN 1999

<sup>38</sup> (1998) 13 NWLR 531 at 583 (SC).

<sup>39</sup> . M.A. Ajomo: Perspective on Human Rights p.p 80-81 cited in J. Nnamdi Aduba, 'The Right to Life under Nigerian Constitution: The Law, The Courts and Reality' (NIALS Press 2011) 4-5.

<sup>40</sup> CFRN 1999.

<sup>41</sup> Ajomo (n21).

<sup>42</sup>Yinka Olomojobi, *Human Rights and Civil Liberties in Nigeria-Discussion, Analyses and Explanations* (Princeton & Associates Publishing Co ltd 2018) 43.

<sup>43</sup> CFRN.

justification for this limitation to the right to life. He said that life is so sacred that resisting arrest or prevention of escape from detention is not enough ground to snuff it out of an individual. It must be noted that the constitution did not define the category of offences that should attract the violation of right to life in this manner.<sup>44</sup> Hence, a person accused of stealing a Goat can be killed if he attempts to resist arrest or escape from detention. Also, at this point, the victim has not been convicted of such offence and still remains innocent.<sup>45</sup>

It has been opined that the Constitutional provision of section 33(2) is worrisome as it somewhat rather than promotes and perpetuates human rights violation through abuse of power.<sup>46</sup> Also bothersome is the availability to the character of Nigeria security agencies, the police and the army in particular. It is essential to note that, as a way of upholding the responsibility to protect, every state has an obligation to deploy its law enforcement instruments and resources to counter the threat and carnage unleashed by terrorism and such measure however, should be consistent with the law and human rights complaint.<sup>47</sup>

In *Aliu Bello and Ors v. A.G. of Oyo State*,<sup>48</sup> the Bello case arose as a result of the unlawful execution of one Nosiru Bello. Nosiru who had been convicted of armed robbery by the High Court of Oyo State and sentenced to death. He filed an appeal against this conviction but 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.

The right to life cannot be seen only in the light of the deprivation of life, but it should cover the sustenance of life. The content of the right to life cannot be pinned to one easily defined scope; it includes a wide variety of other rights which are dependent on the existence of life for their enjoyment; it is the core of all other rights. Accordingly, the right to life should be broadly interpreted to encompass all its components and that some of its important components are contained in the non-justiciable provisions of our Constitution.<sup>49</sup> Section 33 of the Constitution,<sup>50</sup> imposes a positive duty on the government to provide safe and good infrastructure that guarantees a dignified life to the citizenry.<sup>51</sup>

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<sup>44</sup>Yinka Olomajobi (n24).

<sup>45</sup> Section 36(5) of the CFRN provides that a person who is charged with a criminal offence is presumed to be innocent until he is proved guilty.

<sup>46</sup>Nnamdi Akani, 'Efforts to Curtail Abuses of Human Rights During Insurgency and Counter-Insurgency' (2019)

*ResearchGate*<[researchgate.net/publication/336653625\\_EFFECTS\\_TO\\_CURTAIL\\_ABUSES\\_OF\\_HUMAN\\_RIGHTS\\_DURING\\_INSURGENCY\\_AND\\_COUNTER-INSURGENCY/](https://www.researchgate.net/publication/336653625_EFFECTS_TO_CURTAIL_ABUSES_OF_HUMAN_RIGHTS_DURING_INSURGENCY_AND_COUNTER-INSURGENCY/)>

<sup>47</sup> Ibid.

<sup>48</sup> (1986) 5 NWLR 45 (SC).

<sup>49</sup> Amos O. Enabulele, 'The Right to Life or the Right to Compensation upon Death: Perspectives on an Inclusive Understanding of the Constitutional Right to Life in Nigeria' (2014) (3:1) *AfeBabalola University: Journal of Sustainable Development Law and Policy*, 99.

<sup>50</sup> CFRN 1999.

<sup>51</sup> Enabulele (n31).

The right to life should be viewed not only in its traditional approach as when a life of a person is deprived arbitrarily by the government and but in its liberal approach as to also when the government fails to protect life. In line with the liberal approach, the right to life becomes actionable in court even when death has not occurred yet, but when the right to a person's life has been threatened. This was the position in the European case of *Makaratzis v. Greece*,<sup>52</sup> the European Court of Human Rights held that the use of a potentially lethal force against the applicant by the police was a violation of his right to life, notwithstanding that he survived the injuries, for which the Greek government was liable.

In *Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited (Shell & Nigeria National Petroleum Corporation (NNPC))*,<sup>53</sup> the plaintiff Mr. Gbemre of Iweherekan Community Delta State Nigeria sued Shell Nigeria, NNPC and the A.G. of the Federation on the following claims: 'A declaration that the constitutionally guaranteed fundamental rights to life and dignity of human person provided in sections 33(i) and 34(i) of the Constitution of 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 1st and 2nd 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 1st and 2nd 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 the further flaring of gas in the plaintiffs' community.

Courts in some jurisdictions do not view the right to life in isolation. While not abandoning its negative connotation, should death occur, the courts lean heavily on the positive components of the right by reading it along with the positive duties of the State, often declared non-justiciable in constitutional texts. Examples of such positive duties are contained in Chapter II of the Constitution,<sup>54</sup> covering such components of the right to life as food, shelter, healthcare, healthy environment, etc. These provisions, being non-justiciable by virtue of section 6(6)(c) of the Constitution, are not enforceable on their own force. What courts in some jurisdictions have done is to enforce those essential components, not as autonomous constitutional provisions but as in-excludable components of the right to life. Some of the components of the right to life which courts in some jurisdictions interpret and apply as rights imposing a positive duty on the State to protect a dignified life are highlighted below. (a) Positive Duty to Provide Conditions that Guarantee Dignified Life. What this means is that the right to life is not just a bare negative duty on the State not to arbitrarily take life; it emphasizes that the right to life, has at its core, the positive duty on the State to create the essentials that would allow for a dignified life. The government would be in breach of the right to life, therefore, if it does not channel the commonwealth towards the common good by pursuing policies and programs towards a society that guarantees the basic necessities of life to the people.<sup>55</sup>

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<sup>52</sup> Application No. 50385/99

<sup>53</sup> See s. no. FHC/B/CS/53/05 Federal High Court Benin Judicial Division. 14. November 2005 and (2005) AHRLR 151(Nig. HC 2005).

<sup>54</sup> CFRN 1999.

<sup>55</sup> Enabulele (n29).



In the *Street Children* case, the Inter-American Court of Human Rights, declared: The right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning. In essence, the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur.<sup>56</sup> Accordingly: States must adopt any measures that may be necessary to create an adequate statutory framework to discourage any threat to the right to life; to establish an effective system of administration of justice able to investigate, punish and repair any deprivation of lives by state agents, or by individuals; and to protect the right of not being prevented from access to conditions that may guarantee a decent life, which entails the adoption of positive measures to prevent the breach of such right.<sup>57</sup>

### **Effect of Insurgency Attacks on the Right to Life in Nigeria**

The effect of an attack by insurgents in any environment impacts on the right to life directly or indirectly. It embodies the diminishing of the resources in the area of conflict as funds are diverted away from social and economic development. The prices for food and other commodities rise, and fear or physical obstacles prevent the members of the community from pursuing livelihood activities. The supply chains for food imports and essential medicines are often disrupted and the populations may be forced to leave a conflict zone, which could expose them to inadequate shelter, water, sanitation, and food and deprive them of livelihoods.<sup>58</sup> Health care personnel may leave the area while the most vulnerable households may be unable to do so. Most deaths due to conflict - particularly for children - are not from direct causes such as war-related trauma, but are attributable to the conditions that were already the main causes of death before the conflict such as, severe malnutrition, diarrheal disease, acute respiratory infections, etc.<sup>59</sup>

The children who are survival of insurgency face the risk of malnutrition which will affect their health and decrease the resistance to other illness and increase mortality rate. These conflicts affect the operation of markets as traders and their customers are afraid of going to the market and also the increase in transportation cost, which in turn leads to reduced food stocks and as a result poor household face depleted food stocks and acute food insecurity. This led to a nutrition crisis as food insecurity increased and childhood illnesses exacerbated as malnutrition often went untreated.<sup>60</sup> Children in poor areas of the world already face enormous risks. When conflict erupts, an already fragile existence can be made even more unstable. Malnutrition is a complex condition which can be brought on or exacerbated in many ways related to conflict from increased food prices to a case of

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<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Gillian Dunn 'The impact of the Boko Haram insurgency in Northeast Nigeria on childhood wasting: a double-difference study' (2012) (12) *Dunn Conflict and Health* <<http://creativecommons.org/publicdomain/zero/1.0/>> 1.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid, p. 8

dysentery going untreated because health care facilities have shut down, exposing them to armed conflict increases the risk of morbidity and mortality in ways other than trauma.<sup>61</sup>

In Nigeria, attacks by insurgents have affected the lives of many including children in various ways, ranging from mortality to difficult way of living for survivals. As earlier stated, Boko Haram as one of the insurgent groups that operates in Nigeria has caused a lot harm in fighting their cause. Many lives have been lost as a result of this movement amongst other insurgents operational in Nigeria. According to testimonies received by OHCHR, Boko Haram has recruited and used boys and girls for active hostilities. Some boys were forced to attack their own families to demonstrate their loyalty to Boko Haram, while girls were forced to marry, clean, cook and carry equipment and weapons. OHCHR received consistent reports that some boys and girls were increasingly used as human shields and to detonate bombs, a pattern that has intensified since 2014. In May 2015, for example, a 12-year-old girl was used to detonate a bomb at a bus station in Damaturu, State of Yobe, killing seven people. Similar incidents were reported in Cameroon and the Niger. During attacks by Boko Haram, abducted boys were used to identify those who refused to join the group, as well as unmarried women and girls.<sup>62</sup>

In Nigeria, children aged between 6 and 15 years who had been abducted described having been surrounded by “many guns, and armoured vehicles”, and how Boko Haram members had beaten them with cables for not praying or for saying their prayers late. In April 2015, in Yola, State of Adamawa, OHCHR spoke with four children, aged between 12 and 14 years, who had formerly been abducted by Boko Haram and reunited with their families after escaping. They were deeply traumatized, having experienced sexual violence and exploitation.<sup>63</sup> It is submitted that, the above reports are an abuse on the right to life of the victims in these areas.

Another effect of the attacks by these insurgents is the fact that the people living in these communities flee their homes in order to save their lives to different destinations. As a result, displaced persons are held internally in camps, informal settlements, host communities, with families, in rented houses, in places of worship and public buildings and at border crossings. Consequently, their enjoyment of the rights to education, food, health, shelter, and water and sanitation has been greatly reduced.<sup>64</sup> The protection concerns in some camps for displaced persons in Nigeria include insecurity, tensions among residents, and between them and host communities, and sexual and gender-based violence.

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<sup>61</sup> Ibid, p 11

<sup>62</sup> Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General at the Thirtieth Session on Violations and abuses committed by Boko Haram and the impact on human rights in the countries affected

<sup>63</sup> Ibid, p. 45.

<sup>64</sup> Ibid.

One of the tactics employed by insurgents is the use of terroristic tools in carrying out their activities. In these attacks, women and children are subjected to severe forms of abuse including sexual slavery, sexual violence, forced marriages, forced pregnancies and forced conversions. The group justifies such practices by its conception of the role of women and girls in society.<sup>65</sup> One woman interviewed by OHCHR stated that she had been coerced into marriage when Boko Haram attacked her village, adding that “they came back after killing the men and boys and told me that an Imam in their group would preside over the marriage ceremony”. OHCHR received reports of younger girls being married off to fighters and older women forced to work as cooks and cleaners.<sup>66</sup> According to information received during numerous interviews conducted by OHCHR in Nigeria, several women died during childbirth or were forced to abandon their newborn babies as they escaped attacks in Baga, Gwoza and Michika. Women previously held in captivity gave accounts of similar experiences. One woman rescued from Sambisa forest informed OHCHR that she had witnessed births by 10 women while being held captive in different Boko Haram strongholds. Other women reported that while they had been trekking through Sambisa forest, their babies had died and been taken away by Boko Haram. OHCHR also received accounts of women whose newborn babies had died and who been forced to carry them or to abandon them without proper burial during the recapture of towns.<sup>67</sup>

#### **Effect on Emergency Powers and Counter Insurgency on the Right to Life in Nigeria**

Effective counter-insurgency requires extraordinary measures and these extraordinary measures may lead to the abridgement of certain human rights, including the deprivation of life.<sup>68</sup> Human rights are basic and inalienable under the law. Derogation and restriction on fundamental rights are permitted only in the most ordinary of circumstances.<sup>69</sup> The Nigerian Constitution<sup>70</sup> provides for and guarantees the enjoyment of certain human rights as the basic and minimum threshold for the full realization of our humanity. The right to life is one of the fundamental rights that are mostly affected during counter insurgency.

In counter insurgency, the government of nation would use its emergency power to address the insurgency. By this, it means that, coercive powers claimed or invoked by or on behalf of a state is used to address a serious threat, which in the view of those who invoke it, cannot be addressed by ordinary law.<sup>71</sup> This is usually done by the President proclaiming emergency rule and by that declaration, deploying troops to the affected area. The security personnel deployed are given the *carte blanche* to arrest and detain suspects, to take possession and control of any building or structure used for terrorist

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<sup>65</sup> Ibid p. 39

<sup>66</sup> Ibid

<sup>67</sup> Ibid 42

<sup>68</sup> Nnamdi (n28)

<sup>69</sup> Ibid.

<sup>70</sup> Chapter IV of CFRN 1999.

<sup>71</sup> Ramraj, V.V and Thiruvengadamk A, *Emergency Powers in Asia: Exploring the Limits of Legality* (OUP 2008) 2.

activities, to lock down any area of operation by terrorist, to conduct searches and to apprehend and prosecute persons in illegal possession of weapons.<sup>72</sup> The enactment of the Terrorism Prevention Act,<sup>73</sup> arose a lot of concern on its effect on human right and the abuse of such rights, due to the wide powers given to security agencies under the act without judicial control.<sup>74</sup>

However, the problem with this is that, it has been reported that the Joint task force (JTF) have not sufficiently differentiated between civilians and the terrorist groups during combats.<sup>75</sup> For example, it was reported that during the shootout between the JTF and Boko Haram fighters during the attack at Baga in Borno State, about 185 civilians were killed at cross fire.<sup>76</sup> The Nigerian security agents have a long record human rights abuses, including extra judicial killings of criminal suspects in custody, arbitrary arrest, beating of members of the community and destruction of property.<sup>77</sup>

### Conclusion

It is clear from the above discussion that the right to life is highly infringed upon during any insurgency attack and basic necessities needed for survival are deprived leading to a high rate of mortality. The level of insecurity in Nigeria caused by insurgency attacks, has made the life of residents especially those living in highly affected zones vulnerable to constant threats and dangers that affect the quality of life as well as actual loss of life. Although, the Nigerian Constitution guarantees the right to life of every citizen in Nigeria, the same right is limited by the qualification in section 33(2). The right to life should not be viewed only in its traditional approach, but the liberal approach should be adopted in its enforcement and becomes actionable in court even when death has not occurred yet, but when the right to life has been threatened. This right to life is not just a basic adverse on the state not to arbitrarily take life, but it should emphasis life at its core, and a positive duty on the state to create essentials that would allow a dignified life.

The research recommends that the government of Nigeria should regard the life of every citizen as sacred and should adopt any measure that is necessary to create adequate statutory framework to discourage any threat to life. The *carte blanche* given to the security personnel deployed to the areas of insurgency should be qualified as the lives of Nigerians have been violated in the cause of counter insurgency. The work further recommends that section 33(2) of the CFRN should be reviewed and the ground in which human life can be deprived in terms of riot and resisting arrest should be highly qualified. States must also implement any measures that may be essential to create a satisfactory statutory framework to discourage any threat to the right to life; to create an effective system of administration of justice able to investigate, punish and repair any deprivation of lives by insurgents and to protect the right to life from not being prevented from access to conditions that may guarantee a decent life, thereby, adopting positive measures to avert the breach of the right.

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<sup>72</sup>Nnamdi (n 28)

<sup>73</sup> Section 25, 2011

<sup>74</sup>Nnamdi (n 0

<sup>75</sup>Nnamdi (n ).

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.