

WATERING DOWN THE STATUS OF RIGHT TO LIFE IN NIGERIA: AN ANALYSIS OF SECTION 33 OF THE 1999 CONSTITUTION*

Abstract:

The right to life is one of the essential rights in existence in Nigeria. Indeed, the importance of this right is more highlighted when the State takes away the right for one to choose death. This simply means that a person who has the right to live cannot choose the right to die. The issue of euthanasia and suicide in Nigeria are criminalized on the basis that the State so values the individuals life. The constitution of Nigeria elevates this right to a fundamental right and the right to life assumes the first position. It is common for State governments to reemphasize on their inalienable duty to protect lives and properties of citizens at any slightest opportunity. This is very laudable but then a glimpse at that particular sections of the law shows that the Constitution did not actually place this much emphasis on the lives of the citizens. It is therefore this giving with one hand that we will explore in this work and determine actually if the Constitution places much emphasis on life and then look at other instances of this emphasis while drawing a conclusion and proffering recommendations to strengthen the value of life and giving with both hands.

Keywords: Right to Life, Nigerian Constitution, Section 33, Human Being

1. Introduction:

The Nigerian Constitution seems to have placed much importance on the right of the individual's life. This is so because the Constitution in Section 33 made a very pointed provision relating to the sanctity of human life. While this is commendable, the purport of sub sections 2b and c of the same section creates a very viable doubt as to the quality of importance placed as regards human life. In this work, we shall seek out the implication of certain concepts while analyzing the legal provisions as to life. The authors shall also analyze Section 33 of the Constitution and draw a conclusion. In the final analysis the work will specifically seek to make recommendations that will likely concretize the original intendment of that particular section of the Law.

2. Conceptual Clarification

What really is life? Tom Baraski¹ saw life as 'the aspect of existence that processes, acts, reacts, evaluates, and evolves through growth (reproduction and metabolism). The crucial difference between life and non-life (or non-living things) is that life uses energy for physical and conscious development. Life is anything that grows and eventually dies, i.e., ceases to proliferate and be cognizant'. Merriam Webster Online dictionary defined life in varied forms as, 'the quality that distinguishes a vital and functional being from a dead body; a principle or force that is considered to underlie the distinctive quality of animate beings; : an organismic state characterized by capacity for metabolism, growth, reaction to stimuli, and reproduction'.² Now, one can safely define life as the state of being alive; the state of living of any organism particularly man. Working with this definition therefore one will hold that every human is deemed to be alive once such human has safely proceeded from the mother's womb as described by Section 307 of the Criminal Code.³ The next concept here is the concept of rights. What is right? 'Rights are entitlements (not) to perform certain actions, or (not) to be in certain states; or entitlements that others (not) perform certain actions or (not) be in certain states.'⁴ It is further defined as 'a noun meaning an entitlement to something, whether to concepts like justice and due process, or to ownership of property or some interest in property, real or personal. These rights include various freedoms, protection against interference with enjoyment of life and property, civil rights enjoyed by

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¹ Philosophy Now, Issue 101 available online at https://philosophynow.org/issues/101/What_Is_Life accessed on 1/4/2021 at 8/35am

² <https://www.merriam-webster.com/dictionary/life> accessed on 1/4/2021 at 8.39am

³ Cap C38 LFN 2004

⁴ Wenar, Leif, "Rights", *The Stanford Encyclopedia of Philosophy* (Spring 2021 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/spr2021/entries/rights/>> <https://plato.stanford.edu/entries/rights/> accessed on 1/4/2021 at 8.47am

citizens such as voting and access to the courts, natural rights accepted by civilized societies, human rights to protect people throughout the world from terror, torture, barbaric practices and deprivation of civil rights and profit from their labor, and such American constitutional guarantees as the right to freedoms of speech, press, religion, assembly and petition and as an adjective it is defined as just, fair, correct.⁵ A study of right and its entailments may keep this work for more period than is intended. Suffice it to say that right is an entitlement and may depend on whether it is a legal entitlement or social or even moral entitlement. On the understanding that we now know right as entitlement to life, it behooves on us to clearly seek the meaning of the concept right to life.

It is important that we understand that right to life is one of the fundamental rights provided for by the Nigerian Constitution. Chapter IV of the 1999 Constitution of Nigeria made several provisions which it termed fundamental rights. ‘The phrase ‘fundamental rights’ is defined by learned authors of Black’s Law Dictionary (supra) at page 744 as: ‘1. A right derived from natural or fundamental law. 2. Constitutional law. It is a significant component of liberty, encroachment of which are rigorously tested by Courts to ascertain the soundness of purported governmental justification. A fundamental right triggers strict scrutiny to determine whether the law violates the Due Process Clause or Equal Protection Clause of the 14th Amendment. As enunciated by the Supreme Court, fundamental rights include voting, interstate travel, and various aspects of privacy (such as marriage and contraception rights).....’⁶ In *Ukabasi v Ezimora & Ors*,⁷ Yakubu JCA defined Fundamental Rights as, ‘The organic law that establishes the governing principles of a nation or State, esp., constitutional law - Also termed organic law; ground - law.’ Tur JCA opined that, ‘Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 describes rights set out from Section 33-45 as ‘fundamental rights.’ The learned authors of Black’s Law Dictionary, 9th edition, page 744 describes the term ‘fundamental rights’ as: ‘1. A right derived from natural or fundamental law. 2. Constitutional law. It is a significant component of liberty, encroachments of which are rigorously tested by Courts to ascertain the soundness of purported governmental justifications. A fundamental right triggers strict scrutiny to determine whether the law violates the Due Process Clause or the Equal Protection Clause of the 14th Amendment. As enunciated by the Supreme Court, fundamental rights include voting, interstate travel, and various aspects of privacy (such as marriage and contraception rights). - Also termed fundamental interest.’ At the time of commencement of this proceedings in the lower Court the Fundamental Rights (Enforcement Procedure) Rules 1979 with commencement date of 1st January, 1980 was in operation. Order 1 Rule 1(1) of the Rules (supra) also defined ‘Fundamental Right ‘to mean ‘any of the Fundamental Rights provided for in Chapter IV of the Constitution.’⁸

At this stage, it becomes relevant that we take a brief look at the nature of fundamental rights in Nigeria before moving on to the crux of the work which is right to life as it exists in Nigeria. It has been stated that the ‘The Nigerian Constitution seeks to protect and safeguard the basic or fundamental rights of all citizens. By its nature, fundamental right is a right that stands out and above the ordinary laws of the land which is in fact antecedent to any political society. It is a right with international flavor as can be seen in the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act. Fundamental rights are guaranteed to all citizens and any person who alleges that any of the provision has been or likely to be breached can approach the Court for a redress. Section 46 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that:- 46(1) Any person who alleges that the provision of this Charter has being, is being, or is likely to be contravened in any state in relation to him may apply to the High Court for redress.’⁹ Ogunwimiju JCA supported this when she held that, ‘The importance of Fundamental Rights to the citizenry cannot be over-emphasized. They are rights that are not only basic to humans; they form the bedrock for a free society devoid of forces of unbridled aggression, oppression, repression, authoritarianism. They have been entrenched in Chapter IV of the 1999 Constitution of Federal Republic of Nigeria (as amended) due to their sacrosanct nature and importance. When applicants approach the Courts for the enforcement of these rights, the Court must

⁵Right. (n.d.) *West’s Encyclopedia of American Law, edition 2.* (2008). Retrieved April 1 2021 from <https://legal-dictionary.thefreedictionary.com/Right>

⁶ *Ibrahim v Nigerian Army*, (2015) LPELR-24596(CA)

⁷ (2016) LPELR-40174(CA)

⁸ *EL-RUFAl v. SENATE OF THE NATIONAL ASSEMBLY & ORS* (2014) LPELR-23115(CA)

⁹ Per Lamido JCA in *IHUA-MADUENYI v.ROBINSON & ORS* (2019) LPELR-47252(CA)

within reasonable limits do all that is necessary to ensure that these rights are protected.’¹⁰ In *Ajoku v EFCC & anor*, Yakubu JCA went the extra mile to analyse the nature of fundamental rights when he held as follows:

The entrenchment of fundamental rights and the mode of enforcement of their breaches in the Nigerian Constitutions over the years, undoubtedly underscores its importance and the need to zealously protect the sanctity of human life and the liberty of every Nigerian citizen, as guaranteed under Section 35 of the Constitution of the Federal Republic of Nigeria, 1999, as amended. Therefore, the Courts do not shirk their responsibilities in ensuring that the human rights of the citizens are not compromised and on no account should such rights be swept under the carpet or capriciously tampered with by any person, government or any governmental agency under any guise, without a lawful justification. In Black's Law Dictionary, 8th Edition, at page 697, the phrase: ‘fundamental right’ is defined as: ‘1. A right derived from natural or fundamental law. 2. Constitutional law. A significant component of liberty, encroachments of which are vigorously tested by Courts to ascertain the soundness of purported governmental justifications.’

The Supreme Court, in espousing the ideals and quite essence of fundamental rights in *Ransome - Kuti & Ors v. Attorney General of the Federation & Ors* (1985) LPELR - 2940 (SC) @ pages 333-34, per his Lordship, Eso, JSC., succinctly stated thus: ‘What is the nature of a fundamental right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our Constitution, since independence, starting with the Independence Constitution, that is, the Nigeria (Constitution) Order in Council 1960 up to the present Constitution, that is, the Constitution of the Federal Republic of Nigeria, 1979 (the latter does not in fact apply to this case: it is the 1963 Constitution that applies) is to have these rights enshrined in the Constitution so that the rights could be ‘immutable’ to the extent of the ‘non-immutability’ of the Constitution itself. It is not in all countries that the Fundamental Rights guaranteed to the citizen are written into the Constitution. For instance, in England, where there is no written Constitution, it stands to reason that a written code of fundamental rights could not be expected. But notwithstanding, there are fundamental rights. The guarantee against inhuman treatment, as specified in Section 19 of the 1963 Constitution, would, for instance, appear to be the same as some of the fundamental rights guaranteed in England, contained in the Magna Carter 1215 - Articles 19 and 40 which provide - ‘no freeman may be taken or imprisoned, or disused of his freehold or liabilities in free customs or be outlawed or exiled or in any way molested nor judged or condemned except by lawful judgment or in accordance with the law of the land And the crown or its ministers may not imprison or coerce the subject in an arbitrary manner.’¹¹

It is important to understand that the law holds tenaciously to the fact that fundamental rights are very important in any society. It is therefore part of this research to establish if the Law as it were in Nigeria has been this concerned about the right to life as provided.

3. Right to Life Generally

Everyone’s right to life shall be protected by law. This right is one of the most important of the Convention since without the right to life it is impossible to enjoy the other rights.¹² Section 16 of the Human Rights Act of 2019¹³ provides that ‘every person has the right to life and has the right not to be arbitrarily deprived of life’. It is stated that the Human Rights Act¹⁴ protects the right to life. The right not to be deprived of life is limited to arbitrary deprivation of life.¹⁵ It is stated in the Office of the Human Rights Commissioner that ‘the right to life finds its most general recognition in article 3 of the Universal Declaration of Human Rights. Article 6 of the International Covenant on Civil and Political Rights recognizes the inherent right of every person to life, adding that this right ‘shall be protected by

¹⁰ *OKAFOR & ORS v. NTOKA & ORS* (2017) LPELR-42794(CA)

¹¹ (2018) LPELR-46692(CA), Further see: *H.R.H. Eze Sir. J.E. Ukaobasi v. Berthram Ezimora & amp; Ors* (2016) LPELR - 40174 (CA)

¹² Art 2 The European Convention on Human Rights

¹³ Queensland

¹⁴ Queensland

¹⁵ <https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-life>

law’ and that ‘no one shall be arbitrarily deprived of life’.¹⁶ It is further submitted that the right to life has been provided for in most international and regional documents¹⁷. The right to life covers issues such as extrajudicial killings by State agents, imposition of the death penalty, and enforced disappearances. It is therefore correct to insist that Right to life is one of the essential and primary rights of an individual as there won’t be any right to enjoy where there is no life.

4. Analysis of Right to Life in Nigeria

Section 33 of the 1999 Constitution embodied the right to life in Nigeria. In this work, it won’t be out of place to reproduce the said section verbatim.

Section 33-

- (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.
- (2) A person shall not be regarded as having been deprived of his life in contravention of this section; if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary-
 - (a) For the defence of any person from unlawful violence or for the defence of property;
 - (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
 - (c) For the purpose of suppressing a riot, insurrection or mutiny.’

It may be said that Provision in Section 33 is a lifted provision. In Section 33(1) there is a provision for right to life while in Section 33(2) it contains the deprivations available to Section 33. Article 2(2) of European Convention on Human Rights has the following as the permissible derogations to the right to life as follows:

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

It is therefore correct that the derogations in Section 33 were actually borrowed without considering the suitability of the place of borrowing to the place of enforcement. It is actually correct to state that the challenge available against the said Section 33 stemmed from the derogations contained in sub section 2. In that regards therefore, it will be commendable to analyze the provision of section 33 particularly as it pertains to subsection 2 of the said section. In *COP Taraba State & Anor v Dabo v Anor*,¹⁸ it was held Per Abiriyi JCA, that ‘Fundamental human rights matters are serious matters. Allegations of breach of right to life are much more serious. The first right is the right to life. It is the most precious gift on earth. Thus the law provides that everyone is entitled to life and no one can be deprived of his life intentionally save in the execution of a sentence of a Court etc. See Section 33 of the 1999 Constitution FRN (as amended).’ There is absolutely no question or flaps to raise as pertains to Section 33(1). It is as clear as it should be. It is from the strength of Section 33(1) that the Laws in existence maintained the need for life to be preserved. For Section 33(1) the only exception permitted by law is the execution of a sentence of a court for an offence of which the prisoner is guilty of in Nigeria. This is because Nigeria still retains death penalty as punishment and hence the derogation in 33(1) envisages the deprivation of life by virtue of execution of a sentence of a court. On this issue, the

¹⁶ <https://www.ohchr.org/EN/Issues/Executions/Pages/InternationalStandards.aspx> accessed on 1/4/2021 at 10.10am

¹⁷ For instance, it has been provided for in the following instruments, (art. 4) of African Charter on Human and Peoples’ Rights; art 4 American Convention on Human Rights, art 1 American Declaration of the Rights and Duties of Man; arts 5-8, Arab Charter on Human Rights; art 9 Convention on the Protection of the Rights of Migrant Workers and Members of their Families; art 6 Convention on the Rights of the Child; art 2 European Convention for the Protection of Human Rights and Fundamental Freedoms; Inter-American Convention on the Forced Disappearance of Persons; art 6 International Covenant on Civil and Political Rights; Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances; Protocol to the American Convention on Human Rights to Abolish the Death Penalty ; Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty; art 3 Universal Declaration on Human Rights.

¹⁸ (2019) LPELR-47215(CA)

Court of Appeal in *Joshua v State*¹⁹ per Denton West had this to say: ‘We have been called upon by the Appellant in their brief to consider that the mandatory death sentence is unconstitutional because it causes the arbitrary deprivation of the right to life as enshrined in Section 33 of the Constitution and Article 4 of the African Charter on Human and People's Rights. Section 33(1) of the Constitution provides 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 a Court in respect of a criminal offence of which he has been found guilty in Nigeria. ‘Whilst Article 4 of the African Charter on Human and Peoples Right provides that: ‘Human beings are inviolable. Every human being is entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of this right.’ It is to the joint effect of these provisions that the Appellant said that the right cannot be taken away arbitrarily. ‘Intentionally’ in the Constitution has the same effect as arbitrariness. ...After a thorough submission by the Appellant that though the Constitution provides that the execution of a death sentence in accordance with a law that provides the penalty of death for a criminal offence constitutes an exception to the right to life, not every law providing the penalty of death would be in accordance with the wider requirement of the rule of law that involves non-arbitrariness, and prohibition of Inhuman and Degrading treatment). As regards the arbitrariness of Section 1(2) (a) of the Robbery and Firearms (Special Provisions) Act 1990 that prescribes mandatory death penalty the Court had this to say - ‘the Constitutional permission of the death penalty as an exception to the right to life, does not, in itself, authorize the application of any law that violates other provisions of the Constitution or that is contrary to the requirement of the rule of law, such as prohibition of discrimination, equal protection of the law, inhuman and degrading treatment, denial of fair hearing, arbitrariness etc. In other words, even though the Constitution permits the death penalty, any law that prescribes for the death sentence (or any sentence whatsoever) must comply with all requirements of constitutionality and the rule of law. This rule of constitutional conformity applies in all area of legislation and law making. An example may be found in the constitutional rule on non-discrimination. Death sentence legislation cannot be permitted if it allows discriminatory application of its provision, because discrimination is prohibited in the Constitution. ...The end effect of this submission is the liberal interpretation to be given to the constitutional provision as reflected in Section 33(1) of the Constitution to the effect of declaring as arbitrary the provisions of Section (1) of the Robbery and firearms unconstitutional for prescribing a death penalty for anyone convicted for the offence of armed robbery. The Constitution is a very sacred document that cannot easily be changed at the whims and caprices of anyone, judges inclusive, nor be toyed and applied any how without due consideration. Furthermore, if the Constitution is to be subject of interpretation, then it could only be done in a proper manner by a full Court constituted for that purpose. The principle guiding the interpretation of the Constitution discountenance frivolity and requires the Court, in construing the Constitution to do so with all seriousness of purpose and construct it in a manner that one section would not defeat the intents and purposes of the other. See *Rabiu v The State* (1981) 2 NCLR 293. Both parties are *Ad-Idem* that there have been no specific pronouncement by our superior Court in respect of the death sentence being abolished as it is in order jurisdictions. The position in Nigeria is that the death sentence is a reality. Even though I share the sentiments of the Appellant in respect of their submission pertaining to the scrapping of the death sentence as arbitrary, inhuman and degrading and that no man except GOD in my view has a right to take life; the Nigerian Law is so clear on the issue and needed to be properly orchestrated in the right forum like the National Assembly, ... e.t.c. It seems to me that *Rabiu v State* is the *locus classicus* on construction of our Constitution. It discountenanced frivolity and requires the Court, in construing the Constitution to do so with liberalism and should avoid constructing it in a manner that one section would defeat the intents or purposes of another. At page 326 thereof, his Lordship, Sir Udo Udoma JSC (of blessed memory) said: ‘It is the duty of this Court to bear constantly in mind the fact that the present Constitution has been proclaimed the Supreme Law of the land, that it is a written, organic instrument meant to serve not only the present generation, but also several generations yet unborn; that it was made, enacted and given to themselves by the people of the Federal Republic of Nigeria ... that the function of the Constitution is to establish a, framework and principles of government, broad and general in terms, intended to apply to the varying conditions which the development of our several communities involve, ours being plural, dynamic society, and therefore, mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of government enshrined in the

¹⁹ (2009) LPELR-8189(CA)

Constitution; And where the question is whether the Constitution has used an expression in the wider or in the narrower sense, in my view, this Court should whenever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrow interpretation will best carry out the objects and purposes of the Constitution.’ In view of the foregoing, unless there is constituted a full Court of this Court to delve into the issue of the interpretation of the offending provision of the law that is the Supreme Law and also the Statutory Law as contained in the Robbery and Firearms Act (Special Provisions) 1990 Act, I will hesitate so to do, and agree with the Respondent. However for now, this Court appreciates the mature approach by IGUH, JSC, when confronted with similar argument on the issue of capital punishment in the case of *Kalu v State* (1998) 13 NWLR PT. 583 at P 597 relied on by the Respondent to this effect: ‘Although the arguments against capital punishment may be proper basis for legislative abolition of the death penalty, the authority for any action abolishing the death penal is clearly not a matter for the law Courts. Nor have I found myself able to hold that this Court is entitled to repeal or revoke laws ostensibly based upon notions of public policy or sanction simply because such laws, for one reason or the other, are said to be unacceptable to a group of persons or a section of the society. Such repeal or revocation is within the exclusive jurisdiction of the legislature except, of course, such laws are attacked by due process or law on grounds such as unconstitutionality, illegality or the like. ‘

The position therefore as it stands is that death penalty is a legitimate punishment in Nigeria and offers derogation to the right to life as anchored on Section 33(1) of the Constitution. At this juncture, we will turn our attention to the other derogations as evidenced in Section 33(2)(a-c) of the Constitution. Section 33(2a) provided an excuse for one who deprives a person of his life in the course of a defence of any person from unlawful violence or for the defence of property. In analyzing this sub section, it is imperative to submit that the first arm of the sub section has no major flaws. It simply empowers another to make use of force in the protection of another’s life. This ostensibly has been highlighted in Section 288 of the Criminal Code²⁰ as aiding in self defence. The taking with another hand here is the authorization of deprivation of life over the defence of a property. It is painful that a law that values human life will place a property over such life. Even under the Criminal Code²¹, defence of property does not authorize a person to do the other any harm but in the *grund norm*, the Constitution, a person is now allowed not just to do harm but to kill in the defence of a property. This is worrisome. There are other remedies for the loss or damage to property. To empower another to take the life of another over a property is to place lesser emphasis on the life of a person. This is one of the issues under consideration and it is suggested that this emphasis placed on a property over a life be realigned in order for the cliché right to life being supreme to become valuable.

Under Section 33 (2b) the Constitution empowers deprivation of life in order to effect a law arrest or to prevent the escape of a person lawfully detained. A critical look at these disjunctive provisions shows that Nigeria is on a very dangerous level. A state that empowers its security agencies to kill while effecting arrest or kill while preventing escape of a lawfully detained person is actually making a call for extra judicial killings. Oluwafifehan Ogunde reported that on 31st March 2019, a police team from the anti-cultism unit of the Lagos State police command reportedly killed a man in his 30s, a Mr Kolade Johnson.²²Of course the usual defence to such killing is that the suspect is resisting arrest or that he was fleeing from a lawful custody. Amnesty International reports the following two separate incidents: ‘Ken Niweigha was arrested on 26 May 2009. He was brought to the State Criminal Investigation Department (State CID) in Yenagoa, and paraded in front of the media. According to the police, Ken Niweigha had agreed to show them his hideout and then tried to escape and was killed. Amnesty International’s research shows that it is unlikely Ken Niweigha was taken out of State CID detention . It is believed he died at the State CID. Eye witnesses say that he was shot in the leg and in the ribs, and beaten in the neck area. His body was taken to the Federal Medical Centre in Yenagoa and was buried in an undisclosed location by the authorities. The day after his arrest, the police reportedly returned to his house and burned his documents and his laptop. David Idoko, Stanley Okghara (not their real names) and three other men were arrested in April 2005 for suspected armed robbery. They were detained in

²⁰ Cap C38 LFN 2004

²¹ Sections 289, 290 etc.

²² News report available on <http://democracyin africa.org/police-extra-judicial-killings-nigeria/> accessed on 1/4/21

Ogui Police Station and State CID in Enugu State. The five men were paraded in front of the media on 27 April 2005. At the end of June 2005, the police announced that the men tried to escape police custody after being allowed to go to the toilet at the same time – an extremely unlikely scenario. They were shot and killed. According to information received by Amnesty International, they died of gunshots to the head and the chest. The men had been in custody for almost two months. They were not brought before a judge, and their families were not informed of their detention or their death.²³ It is therefore a common excuse for security agencies to rely on this particular provision to cover their unlawful killing of citizens of the country. In this era of technology, there are other non-lethal weapons that could be used to incapacitate a suspect for purposes of arresting him and or for purposes of preventing him from fleeing. To clearly authorize that a citizen be deprived of his life over issues of effecting an arrest or preventing escape shows that the Country is actually not that concerned with the value of human life. It can be argued that this is an international derogation but then each adoption especially of laws should be done bearing in mind the sociological background of the society. A society that thrives on extra judicial killings should not create an express way for perpetrators of such evil to escape the punishment they deserve. More importantly, it obviously gives the impression that the Constitution which has given has actually taken back through an apian way.

The third arm of Section 33 is even more deadly. Section 33(2C) provides that life can be deprived for purposes of suppressing a riot, insurrection or mutiny. It is imperative to highlight that mutiny was not part of the acceptable international derogations. Be that as it may, it is correct to say that quelling riot particularly with deadly weapon is tantamount to killing a mosquito with a sledge hammer. It is the correct position of law that the punishment for riot is 3 years imprisonment²⁴ in Nigeria and a person who participated in same is likely to be killed because the law wants to get him to stop that act. The fact that our Constitution acknowledges that death resulting from quelling a riot is justifiable clearly shows that the value of human life in Nigeria is not worth a penny. On this basis, to submit that the right to life is the highest right in the land amounts to a ludicrous joke. If human life is worth the standard set by Section 33(1) then certainly there wouldn't have been any need to sacrifice same on the altar of public peace. For these reasons therefore, one is constrained to conclude that human life has a lesser value that is ascribed to it as the Constitution has actually given with one hand and taken with the other.

5. Conclusion and Recommendations

The essence of this work actually is to highlight the hypocrisy of the law of the land as regards the right to life. In a technology driven era, in an era of incapacitating but non-lethal weapons, it will be wholly hypocritical to provide a leeway for criminals who are actually hell bent on taking out the life of another. The sub provisions of Section 33 simply provide leeway for law enforcement agents to escape from the consequences of their unlawful actions. It is therefore not surprising to hear them threaten suspects and citizens alike by saying, 'I will kill you and nothing will happen.' Truly nothing will happen if one is killed not with the kinds of derogations we have under the Law. It is therefore our opinion that these legal holes be plugged as recommended in this work to clearly maintain the fact the right to life leads while others follow.

It is recommended in this work that Sections 33(2a-c) of the Constitution be amended to reflect the current reality as regards the right to life. There is no property that equates to human life and as such human life need not be wasted to protect the property. Again the idea of using deadly force to effect arrest should be consigned to the dustbin of history. Where deadly force should be used, it must be clearly specified especially where the offender's act is likely to cause losses of life. The issue of using lethal force to prevent the escape of a suspect is a convoluted notion. Suspects duly arrested in Nigeria do not seek means of escape and the reality of such a person escaping is of a lesser percentage. It is therefore suggested that non lethal force be used in such circumstance. Finally, the idea of using deadly force to quell in particular a riot should be jettisoned. Modern ways of quelling riots should be adopted and this expunged from our laws.

²³ Amnesty International, 'Killing at Will: Extra Judicial Executions and other Unlawful Killings by the Police in Nigeria (2009) available online at <https://www.amnesty.org/download/Documents/44000/afr440382009en.pdf> accessed on 1/4/21 at 12.20pm.

²⁴ Section 71 Criminal Code Cap C38 LFN 2004