

**AN EXAMINATION OF CAPITAL PUNISHMENT UNDER THE NIGERIAN
CRIMINAL JUSTICE SYSTEM**

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TITLE PAGE

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BY

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GOU/U21/LAW/328

**A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW,
GODFREY OKOYE UNIVERSITY ENUGU,
IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAW (LL. B) DEGREE**

SUPERVISOR: JOY OBIANUJU NNANI

JULY, 2026

DECLARATION

I, CHIAMAKA EZINNE ALOZIE declare that this research project is an original research carried out by me as part of the requirements for award of Bachelor of Laws (LL.B) during the 2025/2026 academic session. All errors are entirely mine and not intended.



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CERTIFICATION

This is to certify that **CHIAMAKA EZINNE ALOZIE** an undergraduate student of the Faculty of Law, Godfrey Okoye University, Enugu, with the registration number **GOU/U21/LAW/328** has satisfactorily completed the research work in partial fulfillment for the award of Degree of Bachelor of Laws (LL.B).



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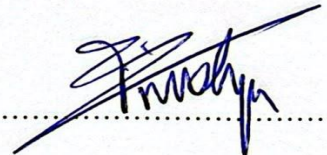


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EXTERNAL EXAMINER

22/7/2020

Date

DEDICATION

This work is first and foremost dedicated to Almighty God, whose grace, wisdom, strength and unfailing love have been my source of guidance throughout this academic journey, and who without his guidance, the successful completion of this work would not have been possible. I also dedicate this work to my beloved parents, whose unwavering love, sacrifices, encouragement, prayers and support have been a great help in the successful completion of this work. I also dedicate this work to my uncle, Late Chima Friday Uko Esq, although not here to see to the completion of this work but was a great instrument in shaping my life and educational pursuits and to my humble self for the perseverance, hard work, resilience and commitment that made the completion of this study possible.

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Afolalu v State (2010) 16 NWLR (Pt 1220) 584 (SC)

Aiguokhian v State

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Ahuchaogu v State (2024) 13 NWLR (Pt 1954) 1 (SC)

Akputa v State (2024) 13 NWLR (Pt 1956) 429 (SC)

Al-Saadoon and Mufdhi v United Kingdom (2010) ECtHR App No 61498/08

Aliyu v State (2013) 12 NWLR (Pt 1368) 403 (SC)

Alhaji Mujahid Asari-Dokubo v Federal Republic of Nigeria (2007) 12 NWLR (Pt 1048) 320 (SC)

Amina Lawal v State (2002) (Sharia Court of Appeal, Katsina State)

Aoko v Fagbemi (1961) 1 All NLR 400

Attorney-General of the Federation v Abubakar (2007) 10 NWLR (Pt 1041) 1

Abdullahi v State (2023) 6 NWLR (Pt 1879) 1 (SC)

Abubakar v State (2016) 12 NWLR (Pt 1525) 321 (CA)

Bozin v State (1985) 2 NWLR (Pt 8) 465 (SC)

Catholic Commission for Justice and Peace v Attorney-General of the Federation (2002) 7 NWLR (Pt 767) 606

Effiom v State (2024) 10 NWLR (Pt 1946) 313 (SC)

Effiong v State (1998) 8 NWLR (Pt 562) 362 (SC)

Ekpemegebere v State (2024) 4 NWLR (Pt 1928) 203 (SC)

Francis v People (2019) LPELR-47802(SC)

Galadima v State (2017) 12 NWLR (Pt 1580) 1 (SC)

Haruna v State (1972) NNLR 40 (SC)

Isah v State (2022) 15 NWLR (Pt 1853) 123 (SC)

James, Wells and Lee v United Kingdom (2013) 56 EHRR 12

Kafkaris v Cyprus (2008) 46 EHRR 45

Kalu v State (1998) 13 NWLR (Pt 583) 531

Maigari v State (2013) 6 NWLR (Pt 1351) 125 (CA)

Murray v Netherlands (2016) 62 EHRR 3

Nwachukwu v State (2007) 17 NWLR (Pt 1062) 31 (SC)

Nwangbomu v State (1994) 2 NWLR (Pt 327) 380

Ogba v State (1992) 2 NWLR (Pt 222) 164 (SC)

Ogugu v State (1994) 9 NWLR (Pt 366) 1

Okoro v State (1988) 5 NWLR (Pt 94) 255 (SC)

Okorodudu v State (2024) 12 NWLR (Pt 1951) 111 (SC)

Okudo v State (2011) 3 NWLR (Pt 1234) 209 (SC)

Olayinka v State (2007) 9 NWLR (Pt 1040) 561

Onuoha v State (1989) 1 NWLR (Pt 101) 23

Onyekachi v State (2015) 17 NWLR (Pt 1489) 393

Peter Nemi v Attorney-General of Lagos State (1996) 6 NWLR (Pt 452) 43

R v Brown [1994] 1 AC 212 (HL)

R v Dudley and Stephens (1884) 14 QBD 273

R v Ghaffor [2002] EWCA Crim 1857

R v Johnson [2002] 2 AC 38 (HL)

R v Kefford [2002] EWCA Crim 1054

R v Offen [2001] 1 WLR 253 (CA)

R v Sargeant (1974) 60 Cr App R 74 (CA)

R v Secretary of State for the Home Department ex parte Hindley [2001] 1 AC 410

R v Secretary of State for the Home Department ex parte Venables [1998] AC 407

R v Williscroft [1975] VR 292

Safiya Hussaini v State (2002)

Sani v State (2017) 8 NWLR (Pt 1568) 522 (SC)

S v Makwanyane 1995 (3) SA 391 (CC)

Soering v United Kingdom (1989) 161 Eur Ct HR (Ser A)

Sunday Jackson v State SC/CR/1026/2022 (SC, 7 March 2025)

Vinter v United Kingdom (2013) 55 EHRR 34

Yakubu v State (2014) 8 NWLR (Pt 1408) 111 (CA)

Yahaya Ibrahim v State (2025) (SC, unreported)

LIST OF STATUTES

Administration of Criminal Justice Act, 2015

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004

Code of Hammurabi

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Criminal Code Act, Cap C38 LFN 2004

Criminal Justice Act 2003

European Convention on Human Rights (1950)

International Covenant on Civil and Political Rights (ICCPR)

Nelson Mandela Rules (United Nations Standard Minimum Rules for the Treatment of Prisoners)

Nigerian Correctional Service Act 2019.

Penal Code Act, Cap P3 LFN 2004

European Convention on Human Rights

Robbery and Firearms (Special Provisions) Act, Cap R11 LFN 2004

Second Optional Protocol to the International Covenant on Civil and Political Rights

Sharia Penal Code Laws (Various Northern States)

Zamfara State Sharia Penal Code Law 2000

LIST OF ABBREVIATION

AC	Appeal Cases
ACJA	Administration of Criminal Justice Act
All NLR	All Nigeria Law Reports
Art	Article
CA	Court of Appeal
CC	Constitutional Court
CFRN	Constitution of the Federal Republic of Nigeria
Cr App R	Criminal Appeal Reports
DC	Divisional Court
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EHRR	European Human Rights Reports
ETS	European Treaty Series
edn	Edition
eds	Editors
EWCA Crim	England and Wales Court of Appeal (Criminal Division)
HL	House of Lords
Ibid.	Ibidem (same source as immediately preceding footnotes)
ICCPR	International Covenant on Civil and Political Rights
LFN	Laws of the Federation of Nigeria
LPELR	Law Pavilion Electronic Law Reports
n	Footnote
NNLR	Nigerian Northern Law Reports

NWLR	Nigerian Weekly Law Reports
Pt	Part
QBD	Queen's Bench Division
SA	South African Law Reports
SC	Supreme Court
S	Section
SS	Sections
UN	United Nations
UNTS	United Nations Treaty Series
VCCA	Victorian Court of Criminal Appeal
Vol	Volume
VR	Victorian Reports
WLR	Weekly Law Reports

ABSTRACT

Capital punishment under the Nigerian criminal justice system is constitutional and its persistent practice in Nigeria, is contrary to the trend in world community according to human right concerns. There has been an unending argument on the validity of capital punishment, as it contravenes the constitutional rights to live, human dignity, fair hearing. There is also a universal problem in administration like the excessive and indefinite stay on death row, the acceptance of confessional statement as conclusive evidence. The study also signifies that there has been a significant shift. This study adopts doctrinal research methodology and sources includes primary and secondary source of information. Capital punishment which is still in practice in Nigerian, by the virtue of the provisions of the Constitution and laws, does however create complex legal, moral and human right issues. There has been no sufficient empirically evidence supporting the use of capital punishment to deter crime in Nigeria but however its imposition continues to cause grave human rights violations and there is also risks of miscarriage of justice. This study also found that there has been significant shift toward abolition worldwide, and increasing pressure from the human right communities toward criminal justice reform. It recommends the abolition of capital punishment in Nigeria and the use of alternative measures like life imprisonment or rehabilitation in order to protect human dignity and secure the society.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The imposition of death penalty has been the center of discussions on the criminal justice of Nigeria, a clashing factor of the colonial past and the modern human rights debate. Historically, capital punishment was introduced in Nigeria through the common law in England, which made death the mandatory sentence for offence of murder, treason, and armed robbery.¹ At independence in 1960, Nigeria retained these punitive frameworks, thus embedding death sentence in the post-colonial authorized order rather than abolishing it.²

In Nigeria presently, death sentence is effected by the existing Criminal Code applicable in South, and Penal Code applicable in North and which the execution could either be by hanging or a firing squad for offenses of murder, culpable homicide that is punishable by a death sentence, armed robbery, treason, and military offenses.³ The continued enforcement of these provisions reinforces the state's commitment to deterrence and retribution as fundamental objectives of its penal policy, despite the rising international level of skepticism towards capital punishment as an effective and moral means of punishing.⁴

The constitutional basis of death penalty in Nigeria is established in Section 33(1) of the Nigerian Constitution⁵ and it provides that everyone by virtue of being humans has a fundamental right to life, but this right will be denied in a situation where upon conviction he has

¹ TA Aguda, *Criminal Law and Procedure of the Southern States of Nigeria* (Sweet & Maxwell 1980) 22–25.

² T Elias, *The Nigerian Legal System* (Routledge 1963) 22-25.

³ Criminal Code Act, Cap C38 Laws Capital of the Federation of Nigeria (LFN) 2004; Penal Code Law, Cap P3 LFN 2004.

⁴ Matthew H Kramer, 'The Ethics of Punishment' (Oxford University Press 2011) 45–52.

⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 33(1).

committed a capital offence and sentenced to death. This provision of the constitution has consistently been construed by courts as an affirmation of its legality. In *Onuoha v State*,⁶ the court held that capital punishment does not encroach upon constitutional right to life where it is imposed after due process of law. Also, in *Kalu v State*, the apex court overruled the argument that imposition of capital punishment resulted to a callous and humiliating treatment, as the court ruled that its imposition was specifically provided in the Constitution.

However, there have been a number of systemic issues with the administration of capital punishment in Nigeria, such as delays in execution, miscarriage of justice, and the fairness of criminal trials.⁷ The issue of death row incarceration, which can take decades, has been criticized with the view that this is a form of psychological torture.⁸ Despite Nigerian court skepticism about the constitutionality of prolonged death row confinement, the matter remains a contentious legal and ethical issue in the criminal justice system of Nigeria. Nigeria's retentionist policy today is being challenged with respect to human rights according to the international standards, especially under the framework of rights of humans instruments like the African Charter on Human and Peoples' Rights, which has been indorsed into its laws. Although this charter does not explicitly forbid capital punishment, its provisions on the inviolability of life of human and human decency have contributed to the argument on death penalty.⁹ Therefore, this research is very important, as it involves fundamental issues of justice, constitutionalism, rights of human, and future direction of Nigerian penal policy.¹⁰

⁶ (1989) 1 NWLR (Pt 101) 23 (SC).

⁷ (1989) 13 NWLR (Pt 583) 531 (SC).

⁸ A Aderemi, 'Death Row Phenomenon in Nigeria' (2015) 6 *Nigerian Journal of Criminal Law* 112

⁹ Amnesty International, *Nigeria: 'Waiting for the Hangman'* (2008) 12–18.

¹⁰ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004.

1.2 Statement of the Problem

Death sentence under the Nigerian criminal justice system, continues to raise constitutional and moral issues because of its irreversible nature and the inefficiencies in the criminal investigation and prosecution processes.¹¹

While the 1999 Constitution of Nigeria authorizes the deprivation of life based on a lawful verdict, the continuous practice of death penalty has often been at variance with the provisions for human dignity, hearing, and equality before the law.¹² The lack of standard sentencing policies in offences that involves the death penalty has resulted into lack of consistency in Nigerian courts, which is at variance with the principles of legality and proportionality in applying death sentence.¹³ The mandatory application of death sentence for offences like murder and armed robbery also limits judicial discretion and individualized sentencing assessments.¹⁴

The Nigerian justice system continues to place a high reliance on confessional evidence in capital offense cases, in spite of judicial warnings about the risks of involuntary or coerced confessions.¹⁵ The reliance on confessional evidence increases the likelihood of miscarriages of justice, especially in situation where there is lack of forensic evidence or legal representation.¹⁶

The appellate process in capital offense cases is often drawn out, leading to lengthy detention of accused on death row and leads to harsh, callous or demeaning action.¹⁷

¹¹ Criminal Code Act Cap C38 LFN 2004 s 319; *Adava v State* (2006) 9 NWLR (Pt 984) 152.

¹² Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 33, 34 and 36.

¹³ *Onyekachi v State* (2015) 17 NWLR (Pt 1489) 393.

¹⁴ Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004 s 1; *Joseph v State* (2011) 7 NWLR (Pt 1246) 402.

¹⁵ *Aoko v Fagbemi* (1961) 1 All NLR 400; *Nwangbomu v State* (1994) 2 NWLR (Pt 327) 380.

¹⁶ *Olayinka v State* (2007) 9 NWLR (Pt 1040) 561.

¹⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 34; Catholic Commission for Justice and Peace

v Attorney-General of the Federation (2002) 7 NWLR (Pt 767) 606.

The recognition of death row phenomenon serves as a reflection of the inefficiencies of the criminal justice system in general, including executive clemency procedures.¹⁸ The overpopulation in Nigeria's death rows is a defilement of Nigeria's responsibilities in domesticated international rights of human instruments on the right to live and human nobility.¹⁹ The African Charter on Human and Peoples' Rights, being a domesticated international human rights instrument in Nigeria, has imposed obligations on Nigeria that are now being judicially interpreted as a limitation on the implementation of the death sentence²⁰

The judicial acknowledgment of the superiority of the African Charter on Human and Peoples' Rights over Nigeria's laws on capital punishment creates a paradox between Nigeria's retentionist laws on death penalty and the international human rights obligations.²¹ The developments in other jurisdictions on abolishing of death penalty in Africa have globally created trends that further isolates Nigeria from other countries of the world.²² The legal, procedural, and normative inconsistencies have created a crisis in the criminal justice system of Nigeria and have also created uncertainty in respect to the validity of death penalty in a recognised democratic system of government.²³

1.3 Research Questions

This research addresses these questions:

- a) What is capital punishment?
- b) What are the offenses of capital punishment?

¹⁸ Francis v People (2019) LPELR-47802(SC).

¹⁹ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 LFN 2004 arts 4, 5.

²⁰ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 LFN 2004; Ogugu v State (1994) 9 NWLR (Pt 366) 1.

²¹ Abacha v Fawehinmi (2000) 6 NWLR (Pt 660) 228.

²² S v Makwanyane 1995 (3) SA 391 (CC).

²³ Attorney-General of the Federation v Abubakar (2007) 10 NWLR (Pt 1041) 1.

- c) What are the execution methods of capital punishment in Nigeria?
- d) How effective are the current legal frameworks of capital punishment in deterring crimes?
- e) What are the issues and human rights implication of capital punishment and alternatives to capital punishments?

1.4 Aims and Objectives of the Study

This study's aim is to examine capital punishment under the Nigerian criminal justice system and to make recommendations for other options of punishment, like imprisonment terms instead of the death penalty.

This study's objective is as follows:

1. To examine capital punishment under the Nigerian criminal justice system.
2. To identify offences of capital punishment in Nigeria.
3. To examine the application of capital punishment in Nigeria.
4. To evaluate and examine the role of capital punishment in the Nigeria criminal justice system and its potency as a deterrent to crime.
5. To identify the issues and limitations of capital punishment and alternatives punishment to capital punishments.

1.5 Scope and Limitations of the Study

This study concentrates on capital punishment under the Nigerian criminal justice system. References may be made to capital punishment under the criminal justice system of other jurisdiction with similar judicial systems for emphasis. Judicial decisions, statutory provisions,

opinions of legal jurist, journals and articles relevant to the study have also been examined in this study towards understanding the issues and human rights implications involved in capital punishment to achieve a favorable outcome.

1.6 Significance of the Study

The study shows how capital punishment clashes with constitutional rights to dignity, a fair trial, and life. In all these areas, there are concerns about wrongful convictions, delayed justice, and discrimination. It also shows how Nigeria's human rights obligations and trends towards abolitionism worldwide call for reform and how abolition is shown to be a step towards a humane and rehabilitative justice system that encourages proportional sentencing and enhances democracy and public trust throughout the country.

This study is important in improving the criminal justice system by providing contemporary and relevant understanding to confront many issues of capital punishment. The study will be a great tool for further research study on the topic and will assist policy makers on the needed reforms in the area of the study.

1.7 Research Methodology

This study adopts the doctrinal research design and the primary sources of data of this study relies on includes: statutes and judicial decisions while the secondary sources of data this study relies on are textbooks, articles, journals and internet materials.

1.8 Literature Review

The argument on death penalty is a controversial one that has remained in the center of the Nigerian criminal justice system and consequently, attracts significant academic debate among criminologists, human rights activists and the Nigerian jurists.

In Nigerian ,capital punishment was inherited through British colonial legislation, especially in the Criminal Code and Penal Code, provides the punishment of death for offenses of murder, treason, armed robbery, amongst other military offences²⁴. In the same vein, Oputa²⁵ queries cultural validity of capital punishment in Nigeria since it is a continuity of colonial practice rather than cultural practice. Such argument that capital punishment is a cornerstone of legal systems in Nigeria is detached by Nigerian scholars who state that judicial systems in pre-colonial Nigeria often preferred community based sentences instead of the death sentence.

One of the important areas that constitutes the body of Nigerian scholarship is the constitutional validity of capital punishment in the Nigeria Constitution. While loss of life is clearly allowed in the execution of a death sentence declared by court in respect to capital offences of which he has been found guilty of, section 33(1)²⁶ even though the same section guarantees right to life.²⁷ Hence, the Supreme Court confirmed that capital punishment is consistent with the constitutional right of life in *Kalu v. State*,²⁸ where it observed that it is actually the provision of the Constitution that allows execution. Akanbi,²⁹ assert that whereas it is far from indicating any serious interface with enhanced standards of human rights, it is actually an example of judicial positivism that is evident in these decisions by the courts. Another often cited judgment is in

²⁴ CO Okonkwo and ME Naish, *Criminal Law in Nigeria* (Sweet & Maxwell 1964) 19–23.

²⁵ CA Oputa, *Human Rights in the Political and Legal Culture of Nigeria* (Fourth Dimension Publishing 1996) 103–107.

²⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33.

²⁷ *Ibid.*

²⁸ (1998) 13 NWLR (Pt. 583) 531.

²⁹ MM Akanbi, 'Judicial Attitudes to Capital Punishment in Nigeria' (2011) 14(2) *Nigerian Law Journal* 45.

Onuoha v. State,³⁰ where the Supreme Court held that the mandatory death sentence for armed robbery does not constitute cruel or inhumane treatment.

Obilade³¹ have questioned this judgment, reasoning that the judges have failed to consider principles such as proportionality and individualization, concepts that are increasingly gaining acceptance in criminal justice administration systems throughout the world. The compulsory death sentencing for offences, like armed robbery under the Robbery and Firearms (Special Provisions) Act, is regularly denounced amongst the Nigerian authors. One of the arguments of death sentence in Nigeria is deterrence, often espoused by policy makers, but then again, Nigerian scholars regard the deterrence argument with a great amount of skepticism. According to Nwankwo,³² he was of the opinion that there is no evidence to prove that the death sentence actually deters crime in Nigeria instead factors like, unemployment, poverty, and the poor enforcement of laws can be logically linked to crime rates. On the issue of deterrence, there is an opinion that the mass execution of criminals by Nigeria's military regime did not create a deterrent effect as to the number of crimes committed. Nigerian authors have expressed the view that the inefficiency of the criminal justice system, protracted detention of death row prisoners, and selective application nullify whatever assumed deterrent capacity of capital punishment is supposed to possess. Hence, this literature confirms global research that queries the effectiveness of death penalty. Capital punishment in Nigeria is marked by heavy reliance on human rights rhetoric. Notwithstanding that capital punishment is still permissible under the Nigerian constitution, few scholars like Enabulele³³ observe that Nigeria's undertakings in some international instruments such as the African Charter for Human and Peoples' Rights call for a

³⁰ (1989) 1 NWLR (Pt. 101) 23.

³¹ AO Obilade, *The Nigerian Legal System* (Sweet & Maxwell 2001) 112–115.

³² C Nwankwo, 'Crime Control and the Death Penalty in Nigeria' (2010) 4(1) *African Journal of Criminology* 89.

³³ AO Enabulele, *Implementation of Human Rights in Nigeria* (Ambik Press 2009) 45-50.

strict interpretation of the provisions relating to capital punishment. Human dignity and the sanctity of life are thus emphasized in the African Charter by Nigerian authors despite that, the African Charter does not prohibit capital punishment

Another major concern is the risk of wrongful execution. Systemic defects like poor representation by lawyers, coerced confessions, and poor detective work are among those shortcomings emphasized by Agomoh³⁴. It is an observation that since execution is final, such flaws are more problematic in respect to capital punishment. Academics have also argued on the aspect of the death row phenomenon, which is the practice of locking up inmates with a death sentence for a long time. In the case of *Peter Nemi v. Attorney General of Lagos State*,³⁵ the Court of Appeal exposed that the psychosomatic agony of the inmates on death row was recognized, but it did not state that such prolonged periods were unconstitutional. It is suggested by Akinseye-George³⁶ that this is an indication of judicial conservatism. In spite of recognition of the constitutional validity of capital punishment, there is a dominant critical consensus among Nigerian writers on the issue which questions the moral, empirical, and human rights justifications of capital punishment. It is often cited that despite its lack of fairness, formalism, colonialism, lack of deterrent effect, and inconsistency with human rights, capital punishment remains valid, in *Kalu v State*³⁷ and *Onuoha v State*.³⁸ The body of scholarly writing on death penalty in Nigeria has been dominated by issues of its constitutional validity, process-related issues, and human rights dimensions rather than outright abolition in the criminal process.³⁹ Many of the writings of Nigerian legal scholars on the death penalty appear to accept its

³⁴U Agomoh, The Death Penalty in Nigeria: A Human Rights Perspective (PRAWA 2006) 60-65.

³⁵ (1996) 6 NWLR (Pt. 452) 43.

³⁶ Y Akinseye-George, *Legal System, Corruption and Governance in Nigeria* (New Century Law 2008) 132-136.

³⁷ (1998) 13 NWLR (Pt. 583) 531.

³⁸ (1989) 1 NWLR (Pt. 101) 23.

³⁹ Y Akinseye-George, *Legal System, Corruption and Governance in Nigeria* (New Century Law 2000) 132-136.

existence in the country in accordance with Section 33 of the 1999 Nigerian constitution, although they critically analyze its implications for fair trial rights, evidence rules, and sentencing inconsistencies.⁴⁰

A major body of scholarly writing has centered on the danger of miscarriage of justice that may be due to the use of confessional evidence and inadequate legal representation in death penalty cases.⁴¹ So many works have been written regarding the problem of congestion in death row prisons in Nigeria, but these writings and works has not been extended to issues of its outright abolition in the criminal process.⁴²

Human rights-oriented literature often focuses on Nigeria's responsibilities under the African Charter on Human and Peoples' Rights, urging a narrow interpretation of the death penalty provisions, but does not extend to advocating abolition.⁴³ Even where there are references to comparative jurisprudence from abolitionist jurisdictions, these are more illustrative than prescriptive and do not offer concrete suggestions for abolition in Nigeria.⁴⁴

Decisions of Nigerian appellate courts have consistently held the death penalty to be constitutional, which has contributed to the academic hesitancy to consider abolition as a viable reform agenda.⁴⁵ As a result, existing literature is retentionist in nature, focusing more on reform, safeguards, and procedural improvements rather than abolition.⁴⁶

This research distinguishes itself from other works in that it makes a principled and doctrinal argument in support of abolition of capital punishment in Nigeria, presenting it as an imperative

⁴⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 33; *Kalu v State* (1998) 13 NWLR (Pt 583) 531.

⁴¹ *Aoko v Fagbemi* (1961) 1 All NLR 400.

⁴² Amnesty International, *Nigeria: 'Waiting for the Hangman'* (2008) 20–24.

⁴³ African Charter on Human and Peoples' Rights (*Ratification and Enforcement*) Act Cap A9 LFN 2004 arts 4, 5.

⁴⁴ *S v Makwanyane* 1995 (3) SA 391 (CC).

⁴⁵ *Kalu v State* (1998) 13 NWLR (Pt 583) 531 (SC).

⁴⁶ BO Nwabueze, *Constitutional Democracy in Africa* (Spectrum Law 2003) 210-218.

in response to injustice, constitutional contradictions, and the developments in the international human rights law. This study makes an important contribution by presenting abolition as an analytical framework, an omission in Nigerian law scholarship.

CHAPTER TWO

CONCEPTUAL AND THEORITICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 Capital Punishment

Capital punishment is the lawful termination of the life of an accused by the state after the conviction of the accused for a capital offense.⁴⁷ Its philosophical underpinning is said to be Kant's retributivism, which holds that the death penalty serves as a form of moral retribution for murder, as opposed to utilitarian deterrence theory as propounded by Bentham.⁴⁸ In Nigeria, the legality of death sentence have been upheld by various courts, as in the case of *Onuoha Kalu v State*,⁴⁹ where the court held that death sentence is constitutionally valid. However, the relevance of capital punishment has been called into question in light of the human rights developments.

The practice of capital punishment has been an argument in the aspects of criminal justice systems worldwide, which some argue its justification as a form of proportionate retribution for certain grave offenses.⁵⁰

i. Historical Development of Capital Punishment

Capital punishment definition as "the lawful deprivation of life by the state after the conviction for a capital offence" indicates that it has been in existence since ancient times, with one of the earliest known instances being in the Code of Hammurabi of ancient Babylon, which included

⁴⁷ Bryan A Garner (ed), *Black's Law Dictionary* (11th edn, Thomson Reuters 2019) (definition of 'capital punishment') 291.

⁴⁸ Immanuel Kant, *The Metaphysics of Morals* (Mary Gregor tr, Cambridge University Press 1996) 105-107.

⁴⁹ (1998) 13 NWLR (Pt 583) 531 (SC).

⁵⁰ Matthew H Kramer, *The Ethics of Capital Punishment* (Oxford University Press 2011) 32-40.

death as a penalty for crimes such as theft and perjury.⁵¹ In ancient Greek and Roman cultures, capital punishment continued to evolve as a means of punishment and deterrence for crimes that were seen as threats to public peace and state security.⁵² In medieval Europe, capital punishment was firmly established in the criminal justice systems of that time, with English common law including death as the legal penalty for offences of murder, treason, and arson.⁵³

The British colonial administration institutionalised this form of English law in Nigeria in the nineteenth century and thus formalised the death penalty in the emerging colonial law.⁵⁴ Prior to colonialism, Nigerian societies under traditional law practised customary laws that provided for death penalty as a punishment in cases of serious criminal activity like murder, incest, witchcraft, and sacrilege.⁵⁵ The amalgamation of the Northern and Southern Protectorates in 1914 created an opportunity to unify criminal law under colonial laws like the Criminal Code in the South and the Penal Code in the North, of which both provided for the death as a punishment.⁵⁶

Furthermore, after Nigeria gained its independence in the year 1960, capital punishment continued to be a feature of Nigerian law, which is a continuation rather than a break in tradition.⁵⁷ In respect of its constitutional validity, there is fast acknowledgement of the constitutional legitimacy of capital punishment under section 33(1) of the Nigerian Constitution, that protects right of an individual to live but also provides that that same right maybe deprived in execution of a sentence after the commission of a offence following the conviction of a

⁵¹ Code of Hammurabi, Laws 6–25 (c 1750 BC).

⁵² Andrew Ashworth, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press 2015) 25-30.

⁵³ William Blackstone, *Commentaries on the Laws of England* (1769) vol 4, 176-180.

⁵⁴ TO Elias, *The Nigerian Legal System* (Routledge 1963) 110-115.

⁵⁵ Yemi Osinbajo, *Cases and Materials on Nigerian Criminal Law* (OUP 1990) 45-52.

⁵⁶ *Criminal Code Act* (Cap C38 LFN 2004); *Penal Code Act* (Cap P3 LFN 2004).

⁵⁷ AO Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979) 60-66.

court.⁵⁸ In the Nigeria law, murder and culpable homicide as stated in the Criminal Code and Penal code are punishable by death.⁵⁹

Moreover, judicial interpretation has strengthened the practice of capital punishment in Nigerian law, as was seen by the decision of the court in *Kalu v State*,⁶⁰ where it held that the constitutionality of death sentence for the offence of armed robbery was valid. Also, in *Onuoha v State*,⁶¹ the court held that mandatory death sentence for offence of armed robbery did not contravene constitutional protection. Under military rule, from 1966 to 1999, more capital offenses were enacted, including those involving armed robbery and treason, which widened the scope of capital punishment.⁶²

The application of Sharia Penal Laws in the twelve northern states in 1999 established that adultery and apostasy are the new capital offences in the twelve states, which further complicated the death penalty regime in Nigeria.⁶³ The international pressure on Nigeria's death penalty regime also increased after the execution of Ken Saro Wiwa and eight other Ogoni activists in 1995⁶⁴, which sparked an international outcry and resulted to the suspension of Nigeria from the Commonwealth.⁶⁵ In modern day Nigeria, although the death penalty is constitutionally and legally valid, executions are rare, and advocacy efforts continue to press for its abolition or at least a moratorium.⁶⁶

⁵⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 33(1).

⁵⁹ Criminal Code Act s 319; Penal Code Act s 221.

⁶⁰ (1998) 13 NWLR (Pt 583) 531 (SC).

⁶¹ (1989) 1 NWLR (Pt 101) 23 (SC).

⁶² Robbery and Firearms (Special Provisions) Act (Cap R11 LFN 2004), s. 1(2).

⁶³ Zamfara State Sharia Penal Code Law 2000, s. 126.

⁶⁴ International PEN, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr and Civil Liberties Organisation v Nigeria (African Commission on Human and Peoples' Rights, Comm 137/94, 139/94, 154/96 and 161/97, 31 October 1998).

⁶⁵ *The Commonwealth v Nigeria* (1995) Commonwealth Ministerial Action Group Report.

⁶⁶ Amnesty International, Global Report: Death Sentences and Executions 2024 (Amnesty International USA 2025) <https://www.amnesty.org/en/what-we-do/international-justice/?utm_source=> accessed 4 February 2026.

ii. International Trends on Capital Punishment

The international law trend and practice indicates that there is a gradual global shift in the direction of the abolition of capital punishment, with abolition now being the practice among majority of the states worldwide, as reported from the recent statistical report of Amnesty International.⁶⁷ In 2024, at least 1,518 executions were carried out in 15 countries, marking the lowest number of countries. International treaties such as the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)⁶⁸ reflect state commitments to abolition and limit the imposition of death sentence. The International Covenant on Civil and Political Rights (ICCPR)⁶⁹ itself allows death penalty only for grievous offences, incorporating a limitation on death sentence based on rights of humans. The legal framework in Europe has developed further, with Protocol No 6 and Protocol No 13 to the European Convention on Human Rights (ECHR)⁷⁰ prohibiting death penalty in peacetime and in all cases respectively, and majority of the members of the Council of Europe having ratified these protocols.⁷¹

In *Soering v United Kingdom*,⁷² the European Court held that the extradition of a person to suffer the death penalty and prolonged detention of accused on the death row may result to inhuman and humiliating treatment under Article 3 of the European Convention on Human Rights (ECHR),⁷³ thus effectively restricting extradition to countries that would practice the death penalty. This case is one of a number of examples that demonstrate how judicial interpretation

⁶⁷ Amnesty International, 'Recorded executions hit their highest figure since 2015' (9 April 2025) (Amnesty International <https://www.amnesty.org/en/what-we-do/international-justice/?utm_source= > accessed 4 February 2026).

⁶⁸ Protocol No 6 to the European Convention on Human Rights and Protocol No 13 (abolishing the death penalty), European Treaty Series Nos 114 & 187.

⁶⁹ European Convention on Human Rights (ECHR) arts 2, 3; Protocol Nos 6 & 13 (abolishing the death penalty)

⁷⁰ Protocol No 6 to the European Convention on Human Rights and Protocol No 13 (abolishing the death penalty), European Treaty Series Nos 114 & 187.

⁷¹ Ibid.

⁷² (1989) 161 Eur Ct HR (ser A).

⁷³ European Convention on Human Rights (ECHR) arts 3

has become increasingly attuned to issues like right of humans that are raised by death penalty. The decision in *Al-Saadoon and Mufdhi v United Kingdom*⁷⁴ further reinforced this trend, where the Court held that the relocation of persons to a country where they encounter the danger of execution was a violation of Articles 2 and 3 of the Convention, underlining non refoulement principle in the circumstance of death penalty.

The General Assembly of the United Nations, in addition has implemented a sequence of resolutions in favor of a moratorium on executions with a view to abolition. This resolution adopted in December 2024 was backed by more than two-thirds of the member states⁷⁵ and was a reflection of the growing political will to move in the direction that death penalty be abolished in order to ensure that the practice is in accordance with the evolving norms of rights of humans. Civil society and human rights groups have shown that death penalty have been abolished in more than two-thirds of member states of the United Nations jurisdictions.

The divergent trends of a diminishing number of executing states but an increasingly large number of holdout jurisdictions utilizing the practice are a testament to the advancement and the opposition to the international movement to respect the right to live and human dignity, as established by international law. Continuing civil society advocacy and legal reform, as well as the changing interpretation of instruments such as the ECHR, are part of the international movement toward the eventual abolition of the practice.⁷⁶

2.2 Theoretical Framework

⁷⁴ (2010) ECtHR, appl no 61498/08.

⁷⁵ Amnesty International, 'UN member states move closer to rejecting death penalty' (n 70).

⁷⁶ *Al-Saadoon and Mufdhi v United Kingdom* (n 72).

2.2.1 Retributive Theory

The theory of retributive justice is rooted in the notion that offenders deserve to be punished in accordance to the wrongdoing they have committed, irrespective of any utilitarian social value such as deterrence or rehabilitation.⁷⁷ The retributive theory of punishment has its roots in Kantian moral philosophy, which asserts that sentence is a definite imperative that is demanded by justice, rather than a means to an end for society.⁷⁸ Immanuel Kant's argument is that to fail to punish a wrongdoer is to deny the wrongdoer moral equality, since it treats the wrongdoer as if they were not bound by the same rules as the rest of society.⁷⁹ This desert based argument separates retribution from consequentialist theories, which hold that punishment is justified on the basis of past conduct rather than future utility.⁸⁰

However, contemporary retributive theory focuses on proportionality, which holds that the punishment should be commensurate to the offence and the offender's liability.⁸¹ The doctrine of proportionality was confirmed by the House of Lords in *R v Secretary of State for the Home Department, ex parte Hindley*,⁸² where the court stated that an excessive punishment that was not proportionate to the offender's desert was in contravention to justice. The rule of law and retribution are also closely tied in that retribution maintains offenders' accountability and moral responsibility, which ensures that offenders are punished within the bounds of their autonomy and are not used for social purposes.⁸³ *R v Dudley and Stephens*⁸⁴ illustrates the retributionist stance of the court on moral culpability.

⁷⁷ Andrew Ashworth, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press 2015) 79-83.

⁷⁸ Immanuel Kant, *The Metaphysics of Morals* (Mary Gregor tr, Cambridge University Press 1996) 105-107.

⁷⁹ Kant (n 78) 52.

⁸⁰ HLA Hart, 'Prolegomenon to the Principles of Punishment' (1959) 60 *Proceedings of the Aristotelian Society* 1,5.

⁸¹ Andrew von Hirsch, *Doing Justice: The Choice of Punishments* (Northeastern University Press 1976) 66-72.

⁸² *R v Secretary of State for the Home Department, ex parte Hindley* [2001] 1 AC 410 (HL).

⁸³ John Rawls, *A Theory of Justice* (rev edn, Harvard University Press 1999) 73-75.

The judicial acceptance of retributive justice can be found in the sentencing decisions, where the courts have repeatedly accepted that punishment is a reflection of the moral disapproval of society for criminal behavior.⁸⁵ In *R v Ghaffor*,⁸⁶ the court asserted that retribution is a major sentencing objective, especially in serious crimes involving moral culpability. In the case of *R v Offen*,⁸⁷ the Supreme Court accepted that punishment should express just deserts but must be limited by proportionality and fairness. However, critics of retributivism contend that this theory is likely to justify the infliction of severe punishment irrespective of its social implications, whereas supporters of this theory argue that without desert, justice will lack its moral basis.⁸⁸ The fact that retributive reasoning has continued to be used in common law systems indicates that desert is a crucial element in any justifiable punishment system.⁸⁹ In *Vinter v United Kingdom*,⁹⁰ the European Court of Human Rights confirmed that retribution is a valid penal objective, as long as punishment does not undermine human dignity. Thus, the theory of retribution continues to be a cornerstone of contemporary punishment theory.

2.2.2 Deterrence Theory

The deterrence theory of punishment is based on the rationale that punishment is justified in that it deters future offenders from engaging in criminal conduct.⁹¹ Deterrence is based on a consequentialist rationale, which emphasizes the social utility of crime prevention rather than the

⁸⁴ (1884) 14 QBD 273 (DC).

⁸⁵ Ashworth (n 77).

⁸⁶ [2002] EWCA Crim 1857.

⁸⁷ Von Hirsch (n 81).

⁸⁸ [2001] 1 WLR 253 (CA).

⁸⁹ Nigel Walker, *Why Punish?* (Oxford University Press 1991) <<https://www.jstor.org/ /3504956>> accessed 4 February 2026

⁹⁰ (2013) 55 EHRR 34 (ECtHR) stable.

⁹¹ Ashworth (n 77).

moral desert of the offender.⁹² The classical deterrence theory is closely linked to utilitarian ideology, most notably in the work of Jeremy Bentham, Who was of the opinion that punishment should outweigh the pleasure that is derived from committing offence.⁹³ Bentham suggested that a rational person will consider the punishment and the pleasure incurred as a result of their actions, with this, making punishment an effective means of influencing their behavior.⁹⁴ This approach to punishment is the basis of deterrence, which targets public, and specific deterrence, which targets the individual offender to prevent recidivism.⁹⁵ Deterrence aims to prevent others from committing that same offence by using the offenders who will be punished as an example to future offenders, this is a notion that is often recognised in sentencing principles.⁹⁶ In the case of *R v Williscroft*,⁹⁷ the Victorian Court of Criminal Appeal has acknowledged that general deterrence is especially important in serious cases that pose a threat to public safety. The English courts have also placed importance on general deterrence in drug trafficking and violent crimes, where the harm caused to society is great.⁹⁸ In the case of *R v Brown*,⁹⁹ the House of Lords held that punishment can be intended for deterrence of conduct that is harmful to society, even if the offender voluntarily assumes the risk. This is in line with the judiciary's recognition of deterrence as a major purpose of punishment.

The Court of Appeal in *R v Sargeant*¹⁰⁰ recognized deterrence as an important purpose of sentencing, especially in circumstances where there is a high probability of re-offending. Deterrence is also emphasized in various statutory provisions governing sentencing, such as s

⁹² Hart (n 80) 1.

⁹³ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Clarendon Press 1789) 170-178.

⁹⁴ Ibid.

⁹⁵ Walker (n 89).

⁹⁶ Ashworth (n 77).

⁹⁷ [1975] VR 292 (VCCA).

⁹⁸ [2011] EWCA Crim 2312.

⁹⁹ [1994] 1 AC 212 (HL).

¹⁰⁰ (1974) 60 Cr App R 74 (CA).

142 of the Criminal Justice Act, which lists deterrence as an objective of sentencing in England and Wales.¹⁰¹

However, despite its efficacy, deterrence theory has been subject to criticism for its reliance on rational decision-making principles in situations where the offender may act impulsively or under socio-economic duress.¹⁰² Empirical research has also challenged the assumption that the severity of punishment makes a significant contribution to deterrence over and above the certainty of detection.¹⁰³ The judicial awareness of these parameters is reflected in the case of *Vinter v United Kingdom*,¹⁰⁴ where the European Court of Human Rights acknowledged the aim of deterrence but stated that punishment must remain compatible with human dignity.

In all, deterrence theory continues to be one of the most important rationales for punishment and informs modern criminal justice systems and its importance of deterrence lies in the belief that deterrence can shape human behaviour and order society when used within certain limits.¹⁰⁵

2.2.3 Preventive Theory

The preventive theory of punishment has its roots in the philosophy of utilitarianism, particularly in the work of Jeremy Bentham, who was of the view that punishment served as a means of preventing future harm.¹⁰⁶ According to Bentham, incapacitating criminals through

¹⁰¹ Criminal Justice Act 2003, s 142.

¹⁰² Daniel Nagin, 'Deterrence in the Twenty-First Century' (2013) 42 *Crime and Justice* 199.

¹⁰³ Ibid.

¹⁰⁴ (2013) 55 EHRR 34 (ECtHR).

¹⁰⁵ Ibid.

¹⁰⁶ Bentham (n 93).

imprisonment for their dangerous conduct will reduce the chances of future criminal acts because they will be locked up.¹⁰⁷

Preventive theory is most apparent in the practice of sentencing policies that focus on incapacitation, including extended sentences and preventive detention.¹⁰⁸ In the case of *R v Sargeant*,¹⁰⁹ the Court of Appeal acknowledged that protection of the public is a proper sentencing aim where there is a significant risk of re offending. The English sentencing code clearly reflects this policy aim, as s 142 of the Criminal Justice Act provides that the protection of the public is a primary sentencing objective.¹¹⁰ Judicial support for preventive sentencing is also found in the case of *R v Offen*,¹¹¹ where the Court of Appeal affirmed extended sentences designed to incapacitate dangerous offenders.

In the case of *R v Johnson*,¹¹² the House of Lords upheld the principle that indeterminate sentences are permissible for the prevention of serious future harm, as long as procedural requirements are observed. Also in the case of *James, Wells and Lee v United Kingdom*,¹¹³ the European Court of Human Rights held that preventive detention is capable of being compatible with Article 5 of the European Convention on Human Rights, as long as it is lawful and proportionate. These decisions in the cases above illustrate that preventive punishment is recognized both in domestic and the international law, but only within the parameters of the rights of humans guarantees.¹¹⁴

¹⁰⁷ Ibid.

¹⁰⁸ Ashworth (n 77).

¹⁰⁹ (1974) 60 Cr App R 74 (CA).

¹¹⁰ Criminal Justice Act 2003, s 142.

¹¹¹ [2001] 1 WLR 253 (CA).

¹¹² [2002] 2 AC 38 (HL).

¹¹³ (2013) 56 EHRR 12 (ECtHR).

¹¹⁴ European Convention on Human Rights (1950) ETS 5, arts 5 and 7.

Critics of the preventive theory have argued that it undermines the presumption of autonomy by punishing individuals for offenses not yet committed.¹¹⁵ HLA Hart, among other theorists, has argued that the overuse of preventive theory can lead to the erosion of the legitimacy of punishment, as the criminal is viewed as a source of danger.¹¹⁶ The concern of the judiciary over the risks involved with preventive punishment can be seen in the case *Vinter v United Kingdom*,¹¹⁷ whereby the European Court of Human Rights ruled that punishment with its sole intent of incapacitation without the possibility of release violates human dignity.

In spite of the arguments raised against preventive theory, its importance has endured the current criminal justice system.¹¹⁸ This could be attributed to the fact that the theory has been based on the view that the law must protect society from grave harm.¹¹⁹

2.2.4 Incapacitation Theory

The incapacitation theory of punishment justifies penal sanctions establishing its justification on the basis that an individual's inability to continue to engage in further criminal behavior provides a protective benefit to society against further harm.¹²⁰ The theoretical basis of the incapacitation is derived from the utilitarian philosophy, particularly in relation to the notion of punishing an individual in a way that reduces more crime committed in the society.¹²¹ Jeremy Bentham argued that locking up criminals through imprisonment prevents them from continuing to engage in criminal behavior and hence provides a protective benefit to society.¹²² This perspective views offenders as risks to be controlled rather than moral agents to be punished for

¹¹⁵ Hart (n 80).

¹¹⁶ Ibid.

¹¹⁷ (2013) 55 EHRR 34 (ECtHR).

¹¹⁸ Ashworth (n 77).

¹¹⁹ Walker (n 89).

¹²⁰ Ashworth (n 77).

¹²¹ Hart (n 80).

¹²² Bentham (n 93).

desert's sake.¹²³ The incapacitation theory of punishment is perhaps most evident in sentencing decisions that involve long term imprisonment, preventive detention, and indeterminate sentences for dangerous offenders.¹²⁴ The legitimacy of incapacitative sentencing has also been acknowledged in English law, particularly for serious violent and sexual offenses.¹²⁵

In one case, *R v Sargeant*,¹²⁶ the Court of Appeal acknowledged that the protection of the public is one of the main concerns for sentencing an offender who poses a high probability of reoffending. The legislative support for incapacitative sentencing can be found in s 142 of the Criminal Justice Act, where one of the principal purposes for sentencing is the protection of the members of the public.¹²⁷ Such a legislative system reflects Parliament's endorsement of incapacitative sentencing.¹²⁸

Another example of the judicial application of incapacitation can be seen in the case of *R v Offen*,¹²⁹ wherein the Court of Appeal upheld extended sentences to restrain dangerous offenders beyond the normal period of imprisonment. Also, in the case of *R v Johnson*,¹³⁰ the House of Lords recognized the imposition of indeterminate sentences to prevent future harm, subject to certain procedural safeguards. This focus on the management of risks is an acknowledgment of the current trend in penology that relies on the assessment of dangerousness.¹³¹

¹²³ Ashworth (n 77).

¹²⁴ Ibid.

¹²⁵ Walker (n 89).

¹²⁶ (1974) 60 Cr App R 74 (CA).

¹²⁷ Criminal Justice Act 2003, s 142.

¹²⁸ Ashworth (n 77).

¹²⁹ [2001] 1 WLR 253 (CA).

¹³⁰ [2002] 2 AC 38 (HL).

¹³¹ Lucia Zedner, 'Dangerousness and the Criminal Justice System' (2007) 51 *Current Legal Problems* 43.

At the international level, incapacitation has been examined in terms of the rights of human law and the right to liberty under Article 5 of the European Convention on Human Rights.¹³² In *James, Wells and Lee v. United Kingdom*¹³³ it was accepted by the court as consistent with the provisions of the Convention, provided that it is lawful, proportionate, and rehabilitative opportunities are provided. However, there are restrictions placed by the court on incapacitative punishment without any prospect of release.¹³⁴ The court in *Vinter v. United Kingdom*¹³⁵ held that life sentences without the release of the accused was based solely upon incapacitation and violate human dignity under Article 3. This highlights an important point that incapacitation should not extinguish rehabilitative prospects.¹³⁶

It has been argued that incapacitation can amount to punishing offenders for crimes not committed, which goes against the concepts of proportionality and autonomy.¹³⁷ HLA Hart warned against the consequences of an over reliance on incapacitation, where punishment is not about moral responsibility but about social control.¹³⁸ However, incapacitation is a key aspect of the modern criminal justice systems, which serves as testament to the ongoing preoccupation with risk management and public harm prevention.¹³⁹

2.2.5 Reformatory Theory

¹³² European Convention on Human Rights (1950) ETS 5, arts 5.

¹³³ *James, Wells and Lee v. United Kingdom* (2013) 56 EHRR 12 (ECtHR).

¹³⁴ *Ibid.*

¹³⁵ *Vinter v. United Kingdom* (2013) 55 EHRR 34 (ECtHR).

¹³⁶ *Ibid.*

¹³⁷ Walker (n 89).

¹³⁸ Hart (n 80).

¹³⁹ Ashworth (n 77).

The reformation theory states that, one of the main purpose of punishment is to restructure the offender as law abiding member of the society..¹⁴⁰ The reformatory theory of punishment does not believe in punitive measures and focuses on moral development and social reintegration.¹⁴¹ The philosophical basis of this theory of punishment is associated with utilitarian and humanistic philosophies, which viewed crime to be an outcome of a social and psychological issues and not due to the wickedness of the offender.¹⁴² Jeremy Bentham's views supported the reformatory theory of punishment when he stated that it is necessary to reform the offender if possible, since the result of reformation is of greater utility than mere suffering.¹⁴³ This approach views offenders as amenable to change and in need of opportunities for self-improvement.¹⁴⁴

The reformatory theory is evident in contemporary sentencing frameworks that emphasize rehabilitation by means of education, counseling, probation, and parole.¹⁴⁵ In the case of *R v Secretary of State for the Home Department, ex parte Venables*,¹⁴⁶ the House of Lords acknowledged that welfare and rehabilitation of young offenders must be primary concerns in sentencing decisions. The English sentencing framework formally embraces rehabilitation as a statutory aim through s 142 of the Criminal Justice Act 2003.¹⁴⁷ This statutory provision confirms that reformatory principles are embodied in contemporary criminal justice policy.¹⁴⁸ The judicial acknowledgment of the significance of rehabilitation is also seen in *R v Keirsey*,¹⁴⁹ in which the Court of Appeal emphasized that reformatory provisions are especially suited for first-time and young offenders. The European Court of Human Rights has always emphasized

¹⁴⁰ Ashworth (n 77).

¹⁴¹ Walker (n 89).

¹⁴² Hart (n 80).

¹⁴³ Bentham (n 93).

¹⁴⁴ Ashworth (n 77).

¹⁴⁵ Ibid.

¹⁴⁶ [1998] AC 407 (HL).

¹⁴⁷ Criminal Justice Act 2003, s 142.

¹⁴⁸ Ashworth (n 77).

¹⁴⁹ [2002] EWCA Crim 1054.

that there should be no extinction of the possibility of reform.¹⁵⁰ In one case, *Vinter v. United Kingdom*,¹⁵¹ the European Court of Human Rights ruled that life sentences without any possibility of release violate Article 3 of the European Convention for Human Rights because they deny offenders the possibility of reform. This case established rehabilitation as an essential feature of dignity of humans.¹⁵² In another case, *Murray v. Netherlands*,¹⁵³ the European Court of Human Rights reaffirmed that there must be a real possibility of release during a life sentence based on progress towards reform. These cases establish that reformatory theory functions as a constitutional check against over punishment.¹⁵⁴

Reformatory theory's opponents argue that rehabilitation could be uncertain and subjective, which might lead to inconsistent sentencing.¹⁵⁵ It is held that a punishment without a sense of reformatory will only encourage further criminal behavior instead of discouraging it.¹⁵⁶ Therefore, the concept of reformatory theory has remained a mainstay of modern thought on punishment.¹⁵⁷

2.2.6 Abolitionist Theory

The abolitionist theory of punishment supports the complete abolition of punitive measures, as it believes that criminal punishment is completely ineffective, immoral, and harmful to society.¹⁵⁸

The abolitionist theory of punishment suggests that punishment only increases cycles of

¹⁵⁰ European Convention on Human Rights 1950 (as amended) art 3.

¹⁵¹ (2013) 55 EHRR 34 (ECtHR).

¹⁵² (2013) 55 EHRR 34 (ECtHR).

¹⁵³ (2016) 62 EHRR 3 (ECtHR).

¹⁵⁴ Ibid.

¹⁵⁵ Hart (n 80).

¹⁵⁶ Walker (n 89).

¹⁵⁷ Ashworth (n 77).

¹⁵⁸ Christie N, *Crime Control as Industry* (2nd edn, Routledge 2000) 13-18.

violence, supports social inequalities, and is completely ineffective as a rehabilitative tool.¹⁵⁹ The theoretical underpinnings of the abolitionist theory of punishment are based on critical criminology and humanistic philosophy, as they promote a more restorative approach to justice and the protection of dignity of humans.¹⁶⁰ The abolitionist theory of punishment was first proposed by philosophers such as Michel Foucault and Nils Christie, who argued that modern criminal justice systems have become a tool of social control, rather than a tool of justice.¹⁶¹ According to the abolitionist theory of punishment, imprisonment is a tool of structural violence, as it marginalises certain groups of society and may even contribute to the very circumstances that result in crime.¹⁶²

The abolitionist approach completely rejects all the classical arguments for punishment, such as retribution, deterrence, incapacitation, and rehabilitation, on the grounds that they are either ineffective or ethically wrong.¹⁶³ Empirical research has demonstrated that high rates of imprisonment are not correlated with reduced crime rates, thereby supporting the abolitionists' arguments on the failure of punishment as a means of social protection.¹⁶⁴ This has informed lawmaking and procedure alterations in various countries, such as Norway and the Netherlands, with a focus on the significance of the restorative justice and alternative punishment.¹⁶⁵ International human rights treaties, such as the International Covenant on Civil and Political Rights,¹⁶⁶ have indirectly supported the abolitionist approach by imposing limitations on the use

¹⁵⁹ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan tr, Vintage 1979) (first published 1975) 232-256.

¹⁶⁰ Christie (n 158).

¹⁶¹ Foucault (n 159).

¹⁶² Ashworth and Zedner, *Preventive Justice* (OUP 2014) 5,10.

¹⁶³ Walker (n 89).

¹⁶⁴ Daniel S Nagin, 'Deterrence in the Twenty-First Century' (2013) 42 *Crime and Justice* 199–263.

¹⁶⁵ Andrew von Hirsch, *The Thinking Prison: Reflections on Penal Reform* (OUP 2003) 33,41.

¹⁶⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

of harsh, callous, or humiliating punishment.¹⁶⁷ This is evidenced through judicial acknowledgment of the moral and human rights constraints of punishment in European law.¹⁶⁸

In *Vinter v United Kingdom*,¹⁶⁹ the European Court of Human Rights found out that death sentences devoid of a opportunity of evaluation breached Article 3 of the European Convention on Human Rights, echoing abolitionist preoccupation with the inherent cruelty of punishment. Also in *Kafkaris v Cyprus*,¹⁷⁰ the European Court of Human Rights reaffirmed that life sentences need to provide a possibility of the discharge and rehabilitation, prioritizing human dignity over social security. These are clear instances of the judiciary working with abolitionist ideas in relation to limiting punishment.

Abolitionist theory is also related to models of restorative justice, which emphasize the need to restore the damage caused to victims and communities, as opposed to causing suffering to offenders.¹⁷¹ Nils Christie's argument that the use of state administered punishment in criminal law leads to a monopoly over conflict resolution and that communities are excluded from the justice process is also relevant.¹⁷² Restorative justice, which involves mediation, restitution, and community service, embodies abolitionist theory in its attempt to address the social and relational aspects of crime.¹⁷³ The United Nations Standard Minimum Rules for the Treatment of Prisoners, also referred to as the Nelson Mandela Rules, promote restorative and rehabilitative approaches and thus indirectly supports the abolitionist agenda.¹⁷⁴

¹⁶⁷ International Covenant on Civil and Political Rights (n.166)

¹⁶⁸ Ashworth (n 77).

¹⁶⁹ (2013) 55 EHRR 34 (ECtHR).

¹⁷⁰ (2008) 46 EHRR 45 (ECtHR).

¹⁷¹ Foucault (n 159).

¹⁷² Christie (n 158).

¹⁷³ Ibid.

¹⁷⁴ United Nations Standard Minimum Rules for the Treatment of Prisoners ('Nelson Mandela Rules') UN Doc A/RES/70/175 (2015).

On the other hand, abolitionists' critics have argued that the complete abolition of punishment could be detrimental to the maintenance of social order and could not sufficiently protect society from dangerous offenders.¹⁷⁵ Nevertheless, abolitionists have argued that the implementation of restorative and preventive justice, along with social reforms aimed at eliminating the root causes of crime, would be a better and ethical way to address the issue of punishment.¹⁷⁶ As such, abolitionist theory remains an integral part of contemporary debates on the reform of the criminal justice system from a moral, social, and human rights point of view.¹⁷⁷

¹⁷⁵ Ashworth (n 77).

¹⁷⁶ Walker (n 89).

¹⁷⁷ Christie (n 158).

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR CAPITAL PUNISHMENT IN NIGERIA

3.1 Legal Framework

3.1.1 Constitutional Basis for the Death Penalty

The constitutional basis of capital punishment in Nigeria is established in section 33(1) of the Nigerian constitution, it accords every person a right to live but allows for the loss of this right in when an execution is made by the court to sentence a person convicted of a capital offence to death.¹⁷⁸ This has been interpreted in *Kalu v State*¹⁷⁹ to mean that the right to live is not outright since it makes provision for exceptions, particularly in instances where a competent court passes a death sentence after due process. In this case, the court ruled that, section 33(1) of the constitution clearly recognises the legality of death penalty and that punishment of death does not infringe on this right to live.¹⁸⁰ The Court also affirmed that as the punishment of death was contemplated in the Constitution, it cannot be considered unconstitutional if it was inflicted as a

¹⁷⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33(1).

¹⁷⁹ (1998) 13 NWLR (Pt 583) 531 (SC).

¹⁸⁰ Ibid.

result of a valid conviction.¹⁸¹ Similarly, in *Okoro v. State*,¹⁸² the court upheld this constitutional legality of the death sentence and held that execution following a lawful sentence falls within the exception provided under section 33(1) of the Nigerian constitution.

In *Adeniji v. State*,¹⁸³ the appeal court held that capital punishment is valid under the Constitution and does not violate the fundamental right to life. The Nigerian courts have dismissed the argument that the death sentence constituted torture or callous treatment stated in section 34(1)(a) of the Constitution, where the court in the case of *Kalu v. State*¹⁸⁴ specifically ruled that death sentence does not constitute a cruel, callous, or demeaning treatment under section 34(1) of the Constitution. This constitutional position further buttresses the fact that such punishment must follow a strict adherence to a fair hearing and due process as provided for in Section 36 of the Nigerian Constitution.¹⁸⁵

Also, in *Effiong v. State*,¹⁸⁶ the court held that a death sentence shall only be valid if there was full compliance with all the constitutional provisions on a fair hearing. Judicial authorities have consistently maintained that capital punishment in the justice system of Nigeria has its constitutional basis, provided it is imposed by a competent court after following the legalised process.¹⁸⁷

3.1.2 Death Penalty Under the Criminal Code Act of Nigeria 2004

The statutory provisions establishing capital punishment in Southern-Nigeria are embedded in the Criminal Code Act, where capital punishment is imposed for some grievous

¹⁸¹ Ibid.

¹⁸² (1988) 5 NWLR (Pt 94) 255 (SC).

¹⁸³ (1998) 14 NWLR (Pt 584) 1 (CA).

¹⁸⁴ (1998) 13 NWLR (Pt 583) 531 (SC).

¹⁸⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36.

¹⁸⁶ (1998) 8 NWLR (Pt 562) 362 (SC).

¹⁸⁷ *Okoro v State* (1988) 5 NWLR (Pt 94) 255 (SC).

offenses.¹⁸⁸ According to Section 319(1) of the Criminal Code Act, anyone convicted of murder should be given the punishment of a death sentence. This provision makes murder the main offense that leads to capital punishment in the Criminal Code. This provision has continually been construed by the courts, as seen in *Ogba v State*,¹⁸⁹ wherein the Nigeria supreme court reiterated the principle that any conviction for murder automatically entails a death sentence. Also, section 316 of the Criminal Code Act detailed the constituent parts of murder, and when proven, a conviction under section 319 is automatically mandatory.¹⁹⁰ The Nigerian supreme court restated its position in *Nwachukwu v State*,¹⁹¹ wherein it was held that when all the ingredients of murder is proved convicts an accused and he is sentenced to death. In more recent cases, including *Akputa v State*,¹⁹² where the Supreme Court Judge, once again highlighted the indispensable factors necessary to establish a case of murder within the framework of the Criminal Code. Similarly, in *Effiom v State*,¹⁹³ it was reiterated that when the prosecution successfully establishes mens rea and causality in accordance with section 316, then the mandatory sentence under section 319 will apply. In *Ekpemegbere v State*,¹⁹⁴ it was clarified that there is no room for discretion in punishing the crime of murder due to the statutory provisions under the Criminal Code. Also in *Okorodudu v State*,¹⁹⁵ the Supreme Court judge further stated that the punishment of death is still the legal sentence for murder under the legal system of Nigeria. Furthermore, the supreme court judge also, in *Ahuchaogu v State*¹⁹⁶ emphasized that

¹⁸⁸ Criminal Code Act, Cap C38, Laws of the Federation of Nigeria (LFN) 2004.

¹⁸⁹ (1992) 2 NWLR (Pt 222) 164 (SC).

¹⁹⁰ Criminal Code Act, Cap C38, LFN 2004, s 316, 319.

¹⁹¹ (2007) 17 NWLR (Pt 1062) 31 (SC).

¹⁹² (2024) 13 NWLR (Pt 1956) 429 (SC).

¹⁹³ (2024) 10 NWLR (Pt 1946) 313 (SC).

¹⁹⁴ (2024) 4 NWLR (Pt 1928) 203 (SC).

¹⁹⁵ (2024) 12 NWLR (Pt 1951) 111 (SC).

¹⁹⁶ (2024) 13 NWLR (Pt 1954) 1 (SC).

despite the inability to recover a corpse, a verdict of murder punishable by death could be upheld with sufficient circumstantial evidence.

Besides murder, section 37 of the Criminal Code Act provides for death sentence as the punishment for treason, considering the gravity of which such crimes against the State are viewed.¹⁹⁷

Moreover, section 402 of the Criminal Code Act¹⁹⁸ provides the imposition of the death penalty in offences of robbery using offensive weapons. In *Bozin v State*,¹⁹⁹ the Supreme Court confirmed that death sentence could be levied on an accused for the offence of armed robbery, based on statutory laws. There have also been recent judicial pronouncements, where capital punishment has been enforced through proper procedures, like the case of *Sunday Jackson v State*²⁰⁰ where the apex court supported that a death sentence after an accused has been convicted of committing an offence that warrants a death sentence.

Nevertheless, Nigerian judiciary remains firm with respect to observing the requirements of due process in capital cases, as evidenced in a case involving murder where the Supreme Court ruled for a retrial owing to the unlawful arraignment of the accused, resulting in the annulment of a death sentence that was originally imposed.²⁰¹ Hence, the Criminal Code Act provisions, backed up by previous and contemporary judicial precedents, sufficiently support the validity of death sentence in Nigeria, especially in the offence of murder, robbery with arms, treason and treasonable offences.²⁰²

¹⁹⁷ Criminal Code Act, Cap C38, LFN 2004, s 37.

¹⁹⁸ Criminal Code Act, Cap C38, LFN 2004, s 402.

¹⁹⁹ (1985) 2 NWLR (Pt 8) 465 (SC).

²⁰⁰ *Sunday Jackson v State* SC/CR/1026/2022 (SC, 7 March 2025).

²⁰¹ *Yahaya Ibrahim v State* (2025) (SC, unreported).

²⁰² *Akputa v State* (2024) 13 NWLR (Pt 1956) 429 (SC).

3.1.3 Capital Punishment under the Penal Code Act 2004

Capital punishment under the law in Northern Nigeria has its basis in the Penal Code Act where the death is prescribed as punishment for various grave offenses.²⁰³ According to Section 221 of the Penal Code Act, any person who commits the offence of a culpable homicide punishable by death will be sentenced to death and is thus established as the main capital offense under the Penal Code. It can therefore be noted that this section has been interpreted to imply that culpable homicide coupled with proof of the relevant mens rea will result to an automatic death sentence.²⁰⁴ In *Galadima v State*,²⁰⁵ the Supreme Court judge confirmed the judgment held by the trial court in convicting the accused person of culpable homicide punishable by death under section 221 of the Penal Code. In *Sani v State*,²⁰⁶ the Supreme Court confirmed that whenever a prosecution establishes ingredients of culpable homicide in according to the provisions of the Penal Code, then capital punishment becomes obligatory. In recent cases, like *Abdullahi v State*²⁰⁷ where the Supreme Court reiterated that section 221 of the Penal Code makes the imposition of a death sentence lawful and should therefore be invoked where applicable. The apex court also sustained the conviction of culpable homicide and reaffirmed that a death sentence is still lawful according to the provisions Penal Code in the case of *Isah v State*.²⁰⁸

Aside the offences of culpable homicide punishable by death, section 190 of the Penal Code prescribes death penalty for the offence of robbery resulting to the death of the victim.²⁰⁹ Indeed,

²⁰³ Penal Code Act, Cap P3, Laws of the Federation of Nigeria (LFN) 2004.

²⁰⁴ *Sani v State* (2017) 8 NWLR (Pt 1568) 522 (SC).

²⁰⁵ (2017) 12 NWLR (Pt 1580) 1 (SC).

²⁰⁶ (2017) 8 NWLR (Pt 1568) 522 (SC).

²⁰⁷ (2023) 6 NWLR (Pt 1879) 1 (SC).

²⁰⁸ (2022) 15 NWLR (Pt 1853) 123 (SC).

²⁰⁹ Penal Code Act, Cap P3, LFN 2004, s 190.

this section has been applied in some instances by the courts where the crime committed was held by the apex court to be a capital offence under the Penal Code, as seen in *Haruna v State*.²¹⁰

The offence of treason is another capital offence established in section 37 of the Penal Code, and it is punishable by death.²¹¹ In *Maigari v. State*,²¹² the gravity of treasonable offenses, as well as the application of the death sentence by virtue of the provisions of the Penal Code was reaffirmed by the appeal court. Also, the Penal Code recognizes the offence of abetting or participating in capital offenses, and provides that all parties to the offence shall be subjected to the same penalty.²¹³

In *Aliyu v State*,²¹⁴ the Supreme Court ruled that any person who was actively involved in committing culpable homicide liable to death punishment was equally liable to death. The application of above mentioned provisions requires a conclusive proof without any iota of doubt and adherence of procedural process. It has been made abundantly clear by the Supreme Court that it is incumbent upon the prosecution to establish all material facts of capital offences charged under the Penal Code.²¹⁵ Therefore, it can be said that the Penal Code Act, in light of interpretations from cases in Nigeria both old and new, creates a definite statutory basis for the application of capital punishment in Northern Nigeria in relation to offences like culpable homicide, robbery causing death, and treason.²¹⁶

3.1.4 Sharia Penal Code

²¹⁰ (1972) NNLR 40 (SC).

²¹¹ Penal Code Act, Cap P3, LFN 2004, s 37.

²¹² (2013) 6 NWLR (Pt 1351) 125 (CA).

²¹³ Penal Code Act, Cap P3, LFN 2004.

²¹⁴ (2013) 12 NWLR (Pt 1368) 403 (SC).

²¹⁵ *Ahmed v State* (2001) 18 NWLR (Pt 746) 622 (SC).

²¹⁶ *Abdullahi v State* (2023) 6 NWLR (Pt 1879) 1 (SC).

Legal framework for capital punishment in Islamic criminal law of Northern Nigeria can be found in the Sharia Penal Codes adopted by different states, where capital punishment is stated as the penalty for offences that are considered as Hudud and Qisas.²¹⁷ According to the Sharia Penal Codes, crimes like Zina, which is adultery by a married person, Hirabah which is armed robbery, and intentional homicide are punishable by death under Islamic law of Northern Nigeria.²¹⁸ Regarding homicide, for example, the doctrine of Qisas allows for a death sentence when there is an evidence to show that the killing was done intentionally, although forgiveness or Diyya may be chosen in place of such punishment.²¹⁹ Similarly, in *Sani v State*,²²⁰ the Supreme Court recognized the existence of penal laws in Northern Nigeria, including those derived from Islamic law, as long as they have been validly promulgated. In *Amina Lawal v State*,²²¹ the Sharia Court of Appeal quashed a death sentence executed by stoning in relation to Zina due to evidentiary and procedural issues, thus showing the exercise of judicial control in the implementation of capital punishment through Sharia law. Similarly, in *Safiya Hussaini v State*,²²² the appellate court set aside a death sentence for the crime of adultery owing to non-conformity with stringent rules of evidence. These cases demonstrate that despite the provision of death penalty in the Sharia Penal Codes, the courts demand stringent proof and due process compliance before death sentences may be sustained.²²³

In the instances of Hirabah which is armed robbery, the Sharia law provisions also call for the death penalty where the crime includes killing or severe injuries, as found in federal law.²²⁴ The

²¹⁷ Sharia Penal Code Laws (various Northern States of Nigeria).

²¹⁸ Ibid.

²¹⁹ Sharia Penal Code Laws (various Northern States of Nigeria).

²²⁰ *Sani v State* (2017) 8 NWLR (Pt 1568) 522 (SC).

²²¹ *Amina Lawal v State* (2002) (Sharia Court of Appeal, Katsina State, unreported).

²²² *Safiya Hussaini v State* (2002) (Sharia Court of Appeal, Sokoto State, unreported).

²²³ *Amina Lawal v State* (2002) (Sharia Court of Appeal, Katsina State, unreported).

²²⁴ Sharia Penal Code Laws (various Northern States of Nigeria).

court have emphasised that it is important to note that confessional evidence or testimony should satisfy high levels of scrutiny if a conviction under Sharia is to be sustained.²²⁵ For instance, in the court of appeal in *Abubakar v State*²²⁶ highlighted the significance of voluntary confession in criminal proceedings even when they are capital offenses. Moreover, the Sharia Penal Code is bound by the provisions of the constitution, specifically fair hearing clause of section 36.²²⁷ As held in the case of *Alhaji Mujahid Asari-Dokubo v Federal Republic of Nigeria*,²²⁸ the Constitution is supreme above all other laws, even those enacted on the basis of religion, that is to say despite the existence of Sharia Penal Codes in Northern Nigeria that envisage the death penalty for certain offenses, there are conditions attached to such enforcement.²²⁹

3.1.5 Robbery and Firearms (Special Provisions) Act 2004

The statutory provisions for the capital punishment with regards to robbery offenses in Nigeria are primarily provided for under the Robbery and Firearms (Special Provisions) Act, which mandates the imposition of death for certain types of aggravated robbery offenses.²³⁰ Under Section 1(2)(a) of the Act, any individual who engages in robbery while being armed with firearms or any other dangerous weapon shall, on conviction, face the mandatory death penalty.²³¹

In *Bozin v State*,²³² the Supreme Court ruled that in cases where a person is convicted of armed robbery under the Act, that death is the only punishment attach to such offence. In *Okudo v*

²²⁵ Safiya Hussaini v State (2002) (Sharia Court of Appeal, Sokoto State, unreported).

²²⁶ (2016) 12 NWLR (Pt 1525) 321 (CA).

²²⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36.

²²⁸ (2007) 12 NWLR (Pt 1048) 320 (SC).

²²⁹ Yakubu v State (2014) 8 NWLR (Pt 1408) 111 (CA).

²³⁰ Robbery and Firearms (Special Provisions) Act, Cap R11, Laws of the Federation of Nigeria (LFN) 2004.

²³¹ Ibid s 1(2)(a).

²³² (1985) 2 NWLR (Pt 8) 465 (SC).

State,²³³ a conviction of an accused and the punishment of death was sustained on the ground that violence was committed in course of the robbery. In recent times, like *Afolalu v State*²³⁴ case where it was held by the Supreme Court that, before the punishment is applied under this Act, there must be evidence, proved that the accused person was armed with weapons or that violence was committed. The elements necessary to establish guilt under the Act were expressly set out in *Bozin v State*,²³⁵ which are; there must be proof of robbery, a proof of arming, and a proof of participation in the robbery.

The Supreme Court in *Aliyu v State*²³⁶ emphasized that, under section 1(2) of the Act, a conviction would lead to imposition of the mandatory punishment of death. However, there must be strict adherence to the constitutionally provided proof beyond reasonable doubt when implementing the provisions of the Act.²³⁷ In *Aiguokhian v State*,²³⁸ the Supreme Court held that, under the Robbery and Firearms (Special Provisions) Act, evidence must not only be cogent and credible but also compelling. Hence, it becomes clear that, under the Act, armed robbery using weapons or involving violence provides for a statutory ground for capital punishment.²³⁹

3.1.6 Administration of Criminal Justice Act 2015

The administration of criminal justice(ACJA) act does not create capital offences however it provides the procedural framework for the sentencing and execution of persons convicted of offence punishable by death under substantive criminal laws in Nigeria.²⁴⁰

²³³ (2011) 3 NWLR (Pt 1234) 209 (SC).

²³⁴ (2010) 16 NWLR (Pt 1220) 584 (SC).

²³⁵ (1985) 2 NWLR (Pt 8) 465 (SC).

²³⁶ *Aliyu v State* (2020) 4 NWLR (Pt 1714) 1 (SC).

²³⁷ *Ibid.*

²³⁸ *Aiguokhian v State* (2004) 7 NWLR (Pt 873) 565 (SC).

²³⁹ *Ibid.*

²⁴⁰ Administration of Criminal Justice Act 2015, pt 38.

Part 38 of the act which contains sections 401-414 regulates the administration of capital punishment and ensures that imposition and execution of the death penalty comply with the requirements of due process.²⁴¹ Section 401 of the act provides that when sentencing an offender, the court shall have regards to the objectives of sentencing, including deterrence, retribution, rehabilitation, restitution, restraint and public protection.²⁴² Section 402 provides that where a person is sentenced to death, the punishment shall be carried out by hanging the convict by neck until dead or by lethal injections, and the sentence shall be pronounced thus, “The sentence of the court upon you is that you be hanged by the neck until you are dead by lethal injection”.²⁴³

Section 403 also provided that a sentence of death shall only be executed in accordance with the procedure prescribed under part 38 of the act, thereby ensuring that all statutory safeguards are complied with before execution.²⁴⁴ The act also protects pregnant women sentenced to death by providing that the execution of the sentence shall be postponed until after the delivery of the child and the child has been weaned.²⁴⁵ This act in section 405 prohibits the imposition of a death sentence on a person who are under the age of 18 years at the time the offence was committed and requires the court to impose such other sentences as maybe authorized by the law.²⁴⁶ The act also provides for the custody of condemned prisoners, the preparation and transmission of the record of proceedings, the exercise of prerogative of mercy, and the issuance of a death warrant before a sentence can lawfully be executed.²⁴⁷

3.2 Institutional Framework

²⁴¹ Ibid ss. 401-414.

²⁴² Ibid s.401.

²⁴³ Administration of Criminal Justice Act 2015, s.402

²⁴⁴ Ibid s.403.

²⁴⁵ Ibid s.404.

²⁴⁶ Ibid s.405.

²⁴⁷ Ibid s.406-414.

3.2.1 Military Tribunal

The legal provisions of capital punishment under the military justice system in Nigeria are mainly covered under the Armed Forces Act which sets up military courts and offenses that attracts death sentence.²⁴⁸ One of such offences is provided in section 48 of the Armed Forces Act which states that any act that may involve a service man committing an offense such as mutiny or any other treasonable act, such a service man maybe after being convicted will be sentenced to death.²⁴⁹ Also section 52 of the Armed Forces Act provides that any other offenses such as deserting one's post when faced with danger maybe sentenced to death.²⁵⁰ The provision of this section have been recognized judicially in *Nigerian Army v Aminu-Kano*²⁵¹ as military tribunals obtain their mandate from statutory provisions, and they must be guided by the rule of law. The Court of Appeal also established that courts martial were legally constituted tribunals with the power to prosecute offenders under the Armed Forces Act, including those punishable by death.²⁵² In another case, *General Court Martial v Ganiyu*,²⁵³ the Court of Appeal supported the power of a court martial to sentence offenders under the Armed Forces Act, including sentencing them to death.

In *Nigerian Army v Yakubu*²⁵⁴ the supreme court also elaborated that, although military courts have the power to prosecute capital cases, they should strictly adhere to constitutional provisions. It was also ruled by the Supreme Court that the procedures of the court martial should meet the requisites of a just proceedings as provided in section 36 of the Constitution.²⁵⁵ This means that

²⁴⁸ Armed Forces Act, Cap A20, Laws of the Federation of Nigeria (LFN) 2004.

²⁴⁹ Armed Forces Act, Cap A20, Laws of the Federation of Nigeria (LFN) 2004, s 48.

²⁵⁰ Ibid s 52.

²⁵¹ *Nigerian Army v Aminu-kano* (2010) 5 NWLR (Pt 1355) 429(CA).

²⁵² Ibid.

²⁵³ (2018) 7 NWLR (Pt 1618) 395 (CA).

²⁵⁴ *Nigerian Army v Yakubu* (2013) 8 NWLR (Pt 1355) 1 (SC).

²⁵⁵ Ibid.

capital punishment handed down by military courts may be confirmed by confirming authorities under the Armed Forces Act.²⁵⁶ In *Garba v Nigerian Army*,²⁵⁷ it was elaborated by the supreme court that any non-conformity to the procedural processes such as confirmation could make the proceedings and sentence null. Furthermore, it was also held in *Olatunbosun v Nigerian Army*²⁵⁸ that proof beyond reasonable doubt should apply in cases concerning capital offenses in the military trials because the burden of proof in a court martial is equally the same as that of a criminal court trial. It is important to note that under the military courts' jurisdiction, the military laws are restricted to persons who are subject to it and an assertion of the said jurisdiction must have justification. This assertion was made in *Audu v Nigerian Army*,²⁵⁹ where the Court of Appeal ruled that only those who are subject to military laws should be tried in a court martial proceeding.

3.2.2. Judiciary

i. Judicial Discretion

There are numerous statutory laws in Nigeria that have limited judicial discretion with regards to death penalty because they make the enforcement of death sentence mandatory for certain cases.²⁶⁰ Section 240 of the Criminal Code Act and Section 211 of the Penal Code Act provided that, the accused person is sentenced to death so long as elements of offences like murder and culpable homicide are proved.²⁶¹ In *Kalu v State*,²⁶² the court ruled that where the punishment set by law is death, then the court has no discretion. This same position holds in respect to the

²⁵⁶ Armed Forces Act, Cap A20, LFN 2004.

²⁵⁷ (2000) 15 NWLR (Pt 690) 555 (SC).

²⁵⁸ *Olatunbosun v Nigerian Army* (2011) 18 NWLR (Pt 1278) 580 (CA).

²⁵⁹ *Audu v Nigerian Army* (2011) 10 NWLR (Pt 1254) 1 (CA).

²⁶⁰ *Kalu v State* (1998) 13 NWLR (Pt 583) 531 (SC).

²⁶¹ Criminal Code Act, Cap C38, LFN 2004; Penal Code Act, Cap P3, LFN 2004.

²⁶² (1998) 13 NWLR (Pt 583) 531 (SC).

Robbery and Firearms (Special Provisions) Act, where capital punishment is imposed upon conviction for armed robbery with a firearm or violence.²⁶³ In *Bozin v State*,²⁶⁴ the position was elaborated and the Supreme Court ruled unequivocally that once a defendant is found guilty of armed robbery, there is only one punishment possible under law, and that is death sentence. However, in *Aigokhian v State*,²⁶⁵ it was reiterated by the court that, because of the nature of murder that has the punishment of death upon conviction as prescribed by the law, the court's discretion must therefore be exercised to the utmost care. Hence, stating that before a conviction is made, every element of the offense should be proved to the required standard.²⁶⁶ This decision of the court shows discretion continues to be used, not necessarily to pass sentence, but in properly analyzing the evidence, in evaluating whether the confessional statement is voluntary and whether there are available defenses to a charge of capital offence.

Similarly, in *Woolmington v DPP*,²⁶⁷ which is incorporated into Nigerian case law, it was held that the burden to prove that an accused is guilty of a capital offence lies on the prosecution who must prove beyond reasonable doubt for a successful conviction. Further, judicial discretion is shown in the process of interpreting confessional statements and other evidence presented at a trial as it was held in *Afolalu v State*, that it is imperative to be convinced of the validity and voluntariness of the confession before imposing the death penalty.²⁶⁸

In addition, courts still have discretion where circumstantial evidence is concerned, guaranteeing that it leads irrefutably to the conviction of the person accused. In *Ibrahim v State*,²⁶⁹ the

²⁶³ Robbery and Firearms (Special Provisions) Act, Cap R11, LFN 2004.

²⁶⁴ (1985) 2 NWLR (Pt 8) 465 (SC).

²⁶⁵ *Aigokhian v State* (2004) 7 NWLR (Pt 873) 565 (SC).

²⁶⁶ *Aigokhian v State* (2004) 7 NWLR (Pt 873) 565 (SC).

²⁶⁷ *Woolmington v DPP* [1935] AC 462.

²⁶⁸ (2010) 16 NWLR (Pt 1220) 584 (SC).

²⁶⁹ (2015) 3 NWLR (Pt 1440) 1 (SC).

Supreme Court held stating the requirement that the circumstantial evidence should be compelling, convincing, and can only point to one conclusion, meaning that the accused is guilty. Recent decisions by the courts have shown that courts insist on procedural compliance in situations involving capital punishment like in *Akputa v State*,²⁷⁰ where the Supreme Court emphasized that failure to correctly prove the elements of murder would lead to the inability to impose capital punishment on the defendant. Likewise, in the case of *Effiom v State*,²⁷¹ the Court held that all reasonable doubts should be considered for the defendant in capital crimes. Hence, even though Nigerian law restricts judicial discretion when it comes to imposing sentences for capital crimes through mandatory death penalties, the courts exercise wide discretion in analyzing evidence and ensuring fair trials in capital crimes.²⁷²

ii. Correctional Centers

Prisons constitute an essential institutional framework in the administration of capital punishment in Nigeria because they are responsible for the custody, management and execution of persons sentenced to death.²⁷³ They are entrusted with the responsibility of ensuring the safe custody of accused who have been found guilty and sentenced to death, maintaining the accurate records relating to capital punishment and implementing the execution warrant strictly in accordance with the law.²⁷⁴

iii. Capital Offences Adjudicated by Courts in Nigeria

a) Murder

²⁷⁰ (2024) 13 NWLR (Pt 1956) 429 (SC).

²⁷¹ (2024) 10 NWLR (Pt 1946) 313 (SC).

²⁷² *Aiguokhian v State* (2004) 7 NWLR (Pt 873) 565 (SC).

²⁷³ Nigerian Correctional Service Act 2019, ss. 2, 3.

²⁷⁴ *Ibid* ss 5,12.

Among all the offences that are capital offences, murder is the most grievous offense under the Nigeria legal system, and it is established under section 316 and section 319(1) of the Criminal Code Act²⁷⁵ that states that whoever commits an offence involving the unlawful killing of another person with a malicious intention is liable, upon conviction to be sentenced to death. There are three important elements to be proved before the conviction of murder and they include; the proof that the deceased died, the actions of the accused caused the death of the victim and finally that such action was carried out with malice aforethought, this was highlighted in *Kalu v State*.²⁷⁶ The court also held that where these elements have been proved beyond reasonable doubt, the offence of murder is established. In *Nwachukwu v State*,²⁷⁷ the Court reiterated that the prosecution must prove all the elements of murder for a conviction to be successful. Pursuant to Section 316 of the Criminal Code Act, malicious intention may be inferred when the accused had an intent to cause death or grievous harm, or where there is a likelihood of death arising out of the conduct.²⁷⁸ In *Omini v State*,²⁷⁹ the Supreme Court clarified that intention to kill or cause grievous harm may be inferred from the kind of weapons used by the accused person in committing the offence. Causation is a key element in prove of murder, and there must be prove that the act of the accused played a significant role that caused the death of the deceased as stated in *Akpan v State*²⁸⁰ where the court held that there must be an evidence of a causal connection between the act done by the accused and the victim's death in establishing the offence of murder. The death does not necessarily have to be immediate so long as the action of the accused person resulted to the victim's death.²⁸¹ This principle of causation, historically,

²⁷⁵ Criminal Code Act, Cap C38, Laws of the Federation of Nigeria (LFN) 2004, ss 316, 319(1).

²⁷⁶ (1998) 13 NWLR (Pt 583) 531 (SC).

²⁷⁷ (2007) 17 NWLR (Pt 1062) 31 (SC).

²⁷⁸ Criminal Code Act, Cap C38, LFN 2004, s 316.

²⁷⁹ (1999) 12 NWLR (Pt 630) 168 (SC).

²⁸⁰ *Akpan v State* (2001) 15 NWLR (Pt 737) 745 (SC).

²⁸¹ *Ibid*.

relates to the “ *One year, one day rule*,” where for a killing to be regarded as murder, death should occur within a year and a day after the injury caused.²⁸² The underlying reason for this rule was that proving causation was quite challenging when considerable time elapsed between the act and the death of the victim.²⁸³

b) Culpable Homicide Punishable by Death.

Culpable homicide punishable by death is provided in Section 221 of the Penal Code Act in circumstances where the accused kills intentionally or knows that death is likely to follow from his actions.²⁸⁴ These are the elements of the offence and they were affirmed in *Galadima v State*.²⁸⁵

c) Armed Robbery.

The provisions of the Robbery and Firearms (Special Provisions) Act, section 1(2), stated that, the crime of armed robbery is a capital offense and it is where the offender commits the act of robbery while being armed or using violence.²⁸⁶ This was decided in *Bozin v State*,²⁸⁷ where the Supreme Court ruled that where robbery is proved, having arms, and the involvement in the crime that the offender is liable and upon conviction, is sentenced to death.

d) Treasonable Felony and Treachery

²⁸² Glanville Williams, *Textbook of Criminal Law* (2nd edn, Stevens 1983) 394.

²⁸³ Ibid.

²⁸⁴ Penal Code Act, Cap P3, Laws of the Federation of Nigeria (LFN) 2004, s 221.

²⁸⁵ *Galadima v State* (2017) 12 NWLR (Pt 1580) 1 (SC).

²⁸⁶ Robbery and Firearms (Special Provisions) Act, Cap R11, Laws of the Federation of Nigeria (LFN) 2004, s 1(2).

²⁸⁷ (1985) 2 NWLR (Pt 8) 465 (SC).

Treasonable felony and other offenses involves the actions that threaten the State and a person found guilty may be sentenced to death in aggravated circumstances.²⁸⁸ These offences highlights the State's concern for national security and political stability.²⁸⁹

e) Offence of Evidence in a Manner That Leads to Execution

Criminal Code Act²⁹⁰ provides that whoever fabricates evidence, thereby causing the conviction and execution of an individual for an offence punishable by death, shall be sentenced to death.²⁹¹ This section signifies the importance attached to the misuse of the judicial procedure which results to the loss of life of an individual.²⁹²

f) Offences like Mutiny under the Armed Forces Act

Under the Armed Forces Act, crimes like mutiny and desertion before the enemy can attract the death penalty because of the danger they pose to military discipline and the security of the state.²⁹³ This was reiterated in *Nigerian Army v Yakubu*.²⁹⁴

g) Capital Crimes under the Sharia System

The Sharia Criminal Code statutes which is applied in some Northern States, provided that capital crimes include Zina (adultery committed by a married person), Hirabah (armed robbery), and murder (Qisas).²⁹⁵ In *Amina Lawal v State*,²⁹⁶ a death sentence was overturned in a case of Zina because of a lack of evidence.

²⁸⁸ Criminal Code Act, Cap C38, LFN 2004, s 37.

²⁸⁹ *Queen v Adesanya* (1959) WRNLR 1.

²⁹⁰ Criminal Code Act, Cap C38, LFN 2004.

²⁹¹ *Ibid* s.120

²⁹² *Okoro v State* (1988) 5 NWLR (Pt 94) 255 (SC).

²⁹³ Armed Forces Act, Cap A20, Laws of the Federation of Nigeria (LFN) 2004.

²⁹⁴ *Nigerian Army v Yakubu* (2013) 8 NWLR (Pt 1355) 1 (SC).

²⁹⁵ Sharia Penal Code Laws (various Northern States of Nigeria).

²⁹⁶ *Amina Lawal v State* (2002) (Sharia Court of Appeal, Katsina State, unreported).

CHAPTER FOUR

ISSUES AND HUMAN RIGHTS IMPLICATIONS OF CAPITAL PUNISHMENT

4.1 Issues of Capital Punishment in Nigeria

i. Lack of fair Trial Guarante

As stated in *Kotoye v Central Bank of Nigeria*,²⁹⁷ the principle of fair trial ensures that the two parties involved, should have equal opportunity to make their representations before a judge who is impartial, especially where it comes to capital trials where the consequences of the case cannot be reversed. This same problem was put into consideration by the court in *Effiom v State*²⁹⁸ where it was stated that the essence of a fair trial is to guarantee that the person on trial gets enough preparation time to defend himself. The lack of fair trial guarantee is one argument against capital punishment in Nigeria because of its nature of irreversibility. The criminal justice system of Nigeria is confronted with challenges like the procedural irregularities, police officers misconduct, the defendant's lawyer negligence or mistake, judicial errors and many others. As a result of these, an accused that is innocent maybe convicted wrongly and if execution has been carried out, such punishment cannot be reversed even if there are new evidence to prove the accused innocence. Delay in administering justice can likewise affect a free trial guarantee in the sense that accused of capital offences often stay in detention at the prison for long period of time most times may extend to years under the harsh condition of the detention center, as they await trials or appeal. As a result of the delay and long detention, evidences may be weakened, witnesses could be affected and may place psychological pressure on the defendants, which may make the defendant unable to defend themselves effectively.

²⁹⁷ *Kotoye v Central Bank of Nigeria* (1989) 1 NWLR (Pt 98) 419 (SC).

²⁹⁸ (1995) 1 NWLR (Pt 373) 507 (SC).

ii. Inadequate Legal Representation

Inadequate legal representation of indigent accused is another problem that hinders the actualization of a fair trial, as highlighted in *Udofia v State*,²⁹⁹ where proper representation in serious criminal cases punishable by death was highlighted as important. The court was of the opinion that an accused person is allowed to have more than one representative who will represent him legally and is competent and committed to ensure a fair trial.

iii. Extensive use of Confessional Statement

One of the most contentious issues in the enforcing capital punishment in Nigeria is the extensive reliance on confessional statements in capital offences. In many cases of murder and armed robbery, convictions and death sentences are based largely on extra judicial confessions obtained during police interrogation, often with little or no independent corroborative evidence. Such a practice has raised serious concerns about fairness, voluntariness and the risk of wrongful executions. Amnesty International reported that a high proportion of death penalty convictions in Nigeria are based largely on confessions alone, many of which are reportedly obtained through torture or coercion.³⁰⁰ The organisation also noted that torture and ill treatment in police investigations remain widespread, despite being prohibited by the constitution and statutes.³⁰¹

A confessional statement is admissible as stated in the Nigerian law where it is proved to have been made voluntarily. Section 28 of the Nigerian Evidence Act 2011 defines confessional statement as a statement made by an accused, that he committed the offence or any other statement suggesting that he committed it.³⁰² The real question, however, is how to know

²⁹⁹ (1984) 12 SC 139.

³⁰⁰ *Amnesty International, Nigeria: "Waiting for the Hangman"* (Amnesty International 2008) AFR 44/020/2008.

³⁰¹ *Ibid.*

³⁰² Evidence Act 2011, s 28.

whether such statements are indeed voluntary, especially in a criminal justice system often accused of police brutality and investigative inefficiency. In *R v Sapele*³⁰³ the Supreme Court has recognised that a confession must be voluntary in order to be capable of supporting a conviction. But the Supreme Court has always maintained that the validity of a conviction is based solely on confessional statements where they are positive, direct and unequivocal.³⁰⁴ The danger here is that suspects tried for capital offences are usually susceptible to intimidation, torture, threat or inducement during interrogation. The United Nations Office on Drugs and Crime has noted that confessions in Nigeria are most often gotten by beating the statements out of suspects. Courts, however, admit them often because accused persons cannot prove coercion.³⁰⁵ This is especially a problem in death penalty cases, where the punishment cannot be reversed. This reliance on potentially involuntary confessions therefore raises an issue of wrongful convictions and executions, which is contrary to the guarantee of fair trial as provided in section 36 of the Constitution.³⁰⁶ The problem is compounded by poor investigative practices and inadequate legal representation. Most often, police officers rely heavily on confessional statements rather than conducting thorough scientific or evidential investigations.³⁰⁷ Therefore, once a suspect signs a statement, voluntarily or not, the confession usually becomes the chief basis for prosecution. In *Tanko v State*³⁰⁸ the Court of Appeal established that death sentence which was predominantly based on a retracted confessional statement. While Nigerian courts usually conduct a mini trial that is called a trial within trial to determine the voluntariness of a statement, indigent defendants

³⁰³ *R v Sapele* (1952) 2 FSC 74.

³⁰⁴ *Kanu v The King* (1952/55) 14 WACA 30; *Afolabi v State* (2013) LPELR-20700(SC).

³⁰⁵ United Nations Office on Drugs and Crime (UNODC), Nigeria Training Module on Investigative Interviewing, the Right to Remain Silent and the Prohibition of Torture (UNODC 2022) 45.

³⁰⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36.

³⁰⁷ Innocent Anaba, 'Confessional Statements Obtained by Torture Common in Nigeria — LEDAP' Vanguard (Lagos, 5 February 2015) < <https://www.vanguardngr.com/2015/02/confessional-statements-obtained-torture-common-nigeria-ledap> > accessed 7 June 2026.

³⁰⁸ (2008) JELR 51247 (CA).

often lack the resources or legal counsel to sufficiently contest the admissibility of such statements.

The judicial authorities have also recognised the dangers of an over reliance on confessional evidence. In *Harrison Owchoruke v Commissioner of Police*,³⁰⁹ the Supreme Court recognized the fact that confessions are often obtained by coercive means during police interrogation. Such acknowledgements aside, the criminal justice system remains heavily reliant on confessional evidence, especially in capital cases involving armed robbery, terrorism or homicide. Such over reliance risks innocent people being wrongly convicted and thereby irreversibly punished. Consequently, the overwhelming reliance of Nigerian death penalty verdicts on confessional statements makes this one of the most important criticisms of the capital punishment in the country. There is a possibility that defendants sent to the gallows based on coerced or dubious confession creates a serious doubt upon the certainty and justice of the criminal justice system of the country. Once an accused is executed for an offense, he or she forfeits forever his or her right to life; an accusation that may be established by unfair investigatory tactics and forced confession cannot, in all likelihood, be certain and accurate.

4.2 Human Right Criticism

The practice of capital punishment in Nigeria is one of major human rights concern given its intrinsic connection with the right to live, dignity, fair trial and protection from harsh, inhuman or degrading punishment. Notwithstanding the fact that capital punishment is provided for in the Nigerian law on capital punishment and on grounds of its constitutionality, human rights activists believe its enforcement generally contravenes the domestic constitutional rights and the

³⁰⁹ *Harrison Owchoruke v Commissioner of Police* (2015) LPELR-24820(SC); United Nations Office on Drugs and Crime (UNODC), *Nigeria Training Module on Investigative Interviewing, the Right to Remain Silent and the Prohibition of Torture* (UNODC 2022) 17–18.

obligations on Nigeria imposed by international law. Section 33(1) of the Constitution³¹⁰ provides for the right to live but allows for the deprivation or termination of this life in the execution of the judgment of the court, after the conviction of an accused for the commission of a crime. This recognition in the constitution, according to the critics, is therefore the reason for the problems surrounding the arbitrary application, unequal application and unjust administration of capital punishment.

An issue that is most often cited with regards to the opposition of the death sentence is usually based on the violation of the right to live and of the human's dignity. The position of Amnesty International has been that capital punishment is a breach of right to live and right from tortured, an inhuman or humiliating punishment.³¹¹ The right is also affirmed by Article 4 of the African Charter on Human and Peoples' Rights stating that every human shall has a right to the respect of his life and for the integrity of his person.³¹² In addition, Article 6 of the ICCPR acknowledges that every human has the right to live and that execution should only be applicable for the most serious offences.³¹³ For this reason, human rights scholars conclude that State sanctioned execution does not stand with the contemporary human rights consciousness or progressive trend toward abolition.³¹⁴

Another crucial human rights dimension on the enforcement of capital punishment in Nigeria arises from the widespread occurrence of unfair trial and wrongful conviction in capital offences. There has been constant criticism of Nigerian criminal justice system with reference to police

³¹⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33(1).

³¹¹ Amnesty International, Nigeria: Why the Death Penalty is No Deterrent to Violent Crime (Amnesty International 2004) AFR 44/033/2004, 5–7.

³¹² African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 4.

³¹³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6.

³¹⁴ William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, Cambridge University Press 2002) 1–5.

torture, over-reliance on confessional statement, pre-trial detention and inadequate legal representation for indigent defendants.³¹⁵ In a number of capital cases, extra-judicial confessions allegedly obtained by torture or duress are used by prosecution as primary evidence leading to conviction. It is the permanent and irreparable consequence of the irreversibility of execution that the presence of such procedural abnormalities becomes particularly dangerous because it ensures an irreversible and irretrievable denial of justice.³¹⁶ In *Aiguokhian v State*,³¹⁷ the Supreme Court highlighted that there is a need for the strict observance of fair trial in administering justice on the ground that the penalty seeks to the deprivation of life.

The harsh, inhuman and degrading treatment arising from long periods on death row is another issue. Majority of those sentenced to death in Nigeria spend years, sometimes even decades, before their sentences are carried out due to delay in appeals and unwillingness on the executive part to sign death warrants.³¹⁸ This is a phenomenon described as the death row syndrome, which has often been criticised for causing immense psychological stress, anxiety and mental anguish to inmates.³¹⁹ In *Soering v United Kingdom*,³²⁰ the European Court of Human Rights confirmed that a lengthy contact to the mental torment of waiting for death constitute of an inhuman and humiliating treatment. The fact that this decision was not a Nigerian court judgment has been noted; but its findings have, undoubtedly, impacted upon the argument of capital punishment in international human rights jurisprudence.

³¹⁵ Amnesty International Nigeria, End the Death Penalty in Nigeria Campaign (Amnesty International Nigeria).

³¹⁶ Evidence Act 2011, ss 28–29; United Nations Office on Drugs and Crime (UNODC), Nigeria Training Module on Investigative Interviewing, the Right to Remain Silent and the Prohibition of Torture (UNODC 2022) 17–18.

³¹⁷ *Aiguokhian v State* (2004) 7 NWLR (Pt 873) 565.

³¹⁸ Amnesty International, Petition to End the Death Penalty in Nigeria (Amnesty International) <<https://www.amnesty.org>> accessed 7 June 2026.

³¹⁹ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015) 289–294.

³²⁰ *Soering v United Kingdom* (1989) 11 EHRR 439, 478–479.

In Nigeria, the discriminatory effect of capital punishment, in the opinion of many human rights advocate, has grave implications for the acknowledgment and the safe guarding of fundamental human rights in Nigeria. Researches and reports seem to indicate that death rows disproportionately consists of poor, uneducated and disadvantaged social groups in Nigeria.³²¹ According to Amnesty International, women in marginalized social or economic positions are particularly disadvantaged under both the criminal and Sharia penal systems.³²²

The human rights consequences of capital punishment in Nigeria are extensive and varied. It, although legalized under the law, challenges the right to live, human dignity, fair trial guarantees, equality before the law, and the prohibition of inhuman, harsh or humiliating treatment. The consistent trend of using involuntary confessions as a result of torture, the poor access to quality legal representation, excessive periods spent on death row and the possibility of wrongful execution with irreversible consequences add credence to calls for its abolition. Consequently, capital punishment should be substituted with a less form of punishment that accords with the modern human rights standards.

4.2.1 Lack of Deterrent

A central argument against the maintenance of capital punishment in the criminal justice system of Nigeria is the perceived ineffectiveness of it as a deterrent. Proponents of capital punishment tend to support its retention under the belief that the ultimate sanction of death will be able to dissuade people from offences like murder, terrorism, armed robbery and kidnapping. Many Nigerian authors and criminologists would argue that there is insufficient proof to show that capital punishment is more effective in deterring crime than lengthy imprisonment or other forms

³²¹ E J Archibong, 'Right to Life and the State's Power to Kill: The Quandary over Death Penalty in Nigeria' (2023) 26 Journal of Legal, Ethical and Regulatory Issues 1, 3–6.

³²² Amnesty International, Women and the Death Penalty in Nigeria (Amnesty International) 8–12.

of punishment.³²³ The continued prevalence of violent crimes in Nigeria therefore, in the face of capital punishment, has been used as an argument against its relevance by many writers. It is argued that the basis of capital punishment in terms of deterring criminals has not been established in Nigeria, because Nigeria keeps experiencing increased violent crime rates, like terrorism, kidnapping and armed robbery while at same time retaining capital punishment against these offences.³²⁴ It is also argued that the assertion that the existence of execution as an ultimate punishment in Nigeria does not contribute any form of reduction to the frequent commission of offences and that societal and economic problems that lead to crime; like poverty, lack of employment, corruption, and bad governance, cannot be addressed through executions.³²⁵ Death penalty is, therefore a form of facade and does not get to the bottom of crime.³²⁶ Critics have also pointed out that poor enforcement of laws and the weak administration of the criminal justice system diminish whatever deterrence the death penalty can have. It is argued that certainty of punishment is typically more effective than severity of punishment when trying to deter criminals.³²⁷ Despite this however, the criminal justice system of Nigeria is marred by incidence of corruption, ineffective investigations, prolonged trials and poor conviction rate.³²⁸ This will make the criminals to think that there is no risk, as they can always get away from it, no matter what the penalty prescribed by the law for the offense committed is.³²⁹ Therefore, deterrence will

³²³ Adewale A Olutola, 'Punishment of Crime in Nigeria and South Africa: Some Perspectives on Capital Punishment' (2020) 20(2) International Criminal Justice Review 276, 281–285.

³²⁴ Ibid 280–283.

³²⁵ Ibid 285–287.

³²⁶ Ibid.

³²⁷ Oluwatoyin Badejogbin, 'Onuoha Kalu v The State and Flaws in Nigeria's Death Penalty Jurisprudence' (2018) 18 African Human Rights Law Journal 551.

³²⁸ Ibid 565–568.

³²⁹ Ibid.

also be absent in the case of death penalty when there is lack of certainty that culprits will be successfully prosecuted.³³⁰

In addition, Nigerian proponents of capital punishment also argue that public support for it, is largely fueled by emotions of the people, that is, anger and fear rather than evidence regarding the deterring effect of capital punishment, having observed that after a high profile crime is committed and publicized many Nigerian's call for immediate execution as a result of emotional responses and insecurity.³³¹ However, public emotional backing for a severe form of punishment is not evidence of its effectiveness in reducing criminal conduct and therefore, decisions with regard to criminal justice policy should be determined by empirical data and constitutional principles rather than emotional outrage.³³² The continuation of capital punishment cannot be supported on the grounds of crime deterrence. There seems to be no deterrent to offences of murder, armed robbery and terrorism despite the harsh and final nature of the punishment, this means that fear of death does not work as a crime deterring factor. The reasons for most of these offenses committed are emotional turmoil, deprivation of basic needs, illiteracy, extreme deprivation, or such others which the criminal may not even think of its consequences while committing them. Capital punishment does not prevent commission of offences but acts as an element of retribution. Furthermore, the death sentence, when carried out on innocent citizens, becomes an irreversible injustice to human life and also goes against the human dignity and justice that it purports to enforce. Abolition of capital punishment, its replacement by the humane and reformative methods of combating crime, is therefore should be seriously considered.

4.3 Public Perception, Cultural and Religious Justification

³³⁰ Ibid.

³³¹ Oluwatoyin Badejogbin, 'Onuoha Kalu v The State and Flaws in Nigeria's Death Penalty Jurisprudence' (2018) 18 African Human Rights Law Journal 551, 565–568.

³³² Ibid.

Notwithstanding, the death penalty in Nigeria has, for cultural, religious and policy considerations, sustained widespread public approval. Thus, many Nigerians still regard the capital penalty as a just punishment for crimes like murder, armed robbery, terrorism and kidnapping, and as appropriate to the Nigerian values of justice, vengeance and protection of the community. These feelings are strongly grounded in tradition, religion and, also, the widespread fear of crime.

From cultural perspectives, there were also other Nigerian communities which historically inflicted capital punishment on crimes that were viewed as posing a threat to communal life and order. Before the advent of the colonial era, many traditional Nigerian societies imposed capital punishment on acts such as murder, treason and witchcraft in the interest of the welfare of society.

According to legal researchers, the historical basis of capital punishment in Nigeria can be drawn from both traditions and the colonial legal structures. The reasons behind its acceptance in Nigeria is to a certain extent due to traditional belief that extreme sanction is required to guarantee safety and the morals of the society.³³³

Religion has also been another important factor supporting the existence of capital punishment in Nigeria. Nigeria is generally an extremely religious country influenced largely by the teachings of Christianity and Islam, and it is based on these principles that many people still support the practice of capital punishment. In the Islamic law there is the concept of Qisas that provides for death sentence for an intentional murder and Hudud punishments which in certain circumstances dictate the death penalty but require proof and evidence to a very high degree and according to

³³³ Abdul-Hamid Ajilogba and Rasheedat Kamal, 'Reassessing the Rationale for Capital Penalties Across Nigeria's Criminal Codes' (SSRN, 3 April 2026) <https://ssrn.com/abstract=6237938> > accessed 9 June 2026.

proponents of the penal provisions of Sharia law in Nigeria, it was argued that these penal provisions derived authority directly from the Holy Qur'an and the Islamic legal heritage.³³⁴ In support of this it was argued that capital punishment is therefore the divinely ordained penalty in certain instances where such is required, and judges or ruling authorities are not in a position to alter divinely prescribed penalties.³³⁵ This reasoning has, in parts of Northern Nigeria that enforce Shari'ah criminal law, increased public backing of capital punishment.³³⁶

Christian views have equally been a factor to the attitudes of the public towards the death penalty in Nigeria. Certain Christian adherents quote scriptures like Genesis 9:6 and Romans 13:4 to buttress the position that it is within the power of the State to carry out death sentences on those who commit capital offenses. The theological support for capital punishment is grounded in the position that punishment is an exercise of divine retribution, and a way of keeping society safe from violent offenders.³³⁷ In this manner, both Christian and Islamic theology have succeeded in projecting capital punishment as not only a morally defensible position, but also a religiously acceptable one in Nigeria.

The public's view towards capital punishment in Nigeria is largely influenced by crime and insecurity, and loss of trust in the criminal justice system. An act of terrorism, a ritual murder, abduction or robbery causes increased public outrage, increasing the demands for harsher punishment of criminals. The citizens of Nigeria generally support the imposition of capital

³³⁴ Adewale Elijah Taiwo, 'Justifications, Challenges and Constitutionality of the Penal Aspects of Shari'ah Law in Nigeria' (2008) 17(1) *Griffith Law Review* 183, 190–196 < <https://doi.org/10.1080/10383441.2008.10854607> > accessed 9 June 2026.

³³⁵ Ahmed A Muhammed-Mikaaeel, 'Capital Punishment in Nigerian Courts: The Position of Abolitionists vis-à-vis Islamic Jurisprudence' (ResearchGate, 2021) < https://www.researchgate.net/profile/Ahmed-Muhammed-Mikaaeel/publication/349368634_Capital_Punishment_in_Nigerian_Courts_The_Position_of_Abolitionists_vis-a-vis_Islamic_Jurisprudence/links/614c502ca3df59440ba4d92b/Capital-Punishment-in-Nigerian-Courts-The-Position-of-Abolitionists-vis-a-vis-Islamic-Jurisprudence.pdf > accessed 9 June 2026.

³³⁶ Ibid.

³³⁷ MB Afangideh, 'Capital Punishment in Nigeria: A Theological Approach (Master's dissertation, University of Malta 2011) < <https://www.um.edu.mt/library/oar/handle/123456789/73177> > accessed 9 June 2026.

punishment for many reasons.³³⁸ One of these reasons is that they consider it to be an effective measure to tackle rising crime and insecurity in Nigeria and consequently, it is often fear and a quest for retribution not evidence of a deterrent effect that fuel public demand for the death penalty.³³⁹

There is a perception amongst the Nigerians that abolition of capital punishment would lead to the increase in crimes and diminish the rule of law. However, the debate is not only based on these assertions. The argument whether the death penalty deters crime more than life imprisonment has being questioned and it is contended that in Nigeria, retentionist views are attributed to a belief that cruel punishment is needed in the society to combat the increase violent crime and that public faith in the legal system would be shaken but the opponents contend that emotional reactions of the public cannot and ought not to be the basis of the punishment which could be inhumane and irreversible.³⁴⁰

Although public opinion, religion and culture have been and will continue to be used to argue for the continuation of capital punishment, such arguments should not take precedence over the core human principles of justice and sanctity of life. Public opinion in support of the death penalty usually stems from reactions that are based on fear, anger, insecurity, and emotions relating to the commission of criminal acts, rather than on considered analysis of its efficacy and morality. Similarly, arguments that are based on culture and religion are usually viewed on the bases that capital punishment serves as an expiation and a retributive mechanism, which may no longer be

³³⁸ Obadiah Illah and Augustine Mogom, 'A Sociological Assessment of Capital Punishment in Nigeria' (2017) 1–16 <https://www.researchgate.net/publication/326226300_A_SOCIOLOGICAL_ASSESSMENT_OF_CAPITAL_PUNISHMENT_IN_NIGERIA> accessed 9 June 2026.

³³⁹ Ibid.

³⁴⁰ AA Olutola, 'Punishment of Crime in Nigeria and South Africa: Some Perspectives on Capital Punishment' (2020) 20(2) *The Oriental Anthropologist* 276 <<https://journals.sagepub.com/doi/abs/10.1177/0972558X20952658>> accessed 9 June 2026.

suitable for modern criminal justice systems and human rights values. The final and irreversible termination of life entailed by the nature of punishment further suggests the lack of scope for rehabilitation, repentance and legal correction. The fact that crime is continually being committed despite the persistence of capital punishment demonstrates the lack of any permanent deterring effect on crime and as such there is no reason for its continuance on the basis of culture, religion, or public will but to be abolished and embrace rehabilitative.

CHAPTER FIVE

CONCLUSION

5.1 Summary of Findings

This study analysis capital punishment under the Nigeria criminal justice system, the offences that are described as capital offences in Nigeria. It finds the form of execution for capital offenders and its efficacy crime prevention. It also finds the human rights violations associated with capital punishment and its potential alternatives.

According to this study, with emphasis to the first research question, capital punishment is the lawful killing of a person by the state, usually, an execution for having committed serious crime and it constitutes the most extreme form of punishment practiced under the law, where the life of the accused is stripped off in a legal and judicial way in accordance with the pronouncement of a legitimate verdict by a duly constituted court. It is a form of punishment officially acknowledged in Nigeria's criminal justice process.

This study answers research question two, where it finds the offences of which an accused will be convicted and sentenced to death and they include the offense of murder, culpable homicide that is punishable by death, armed robbery, treason, treasonable offences, terrorism offences, and the offences of Zina which is adultery provided in the Sharia Penal Code offences that is applicable to some Northern States. The reason for imposing the death penalty for these offences is because of the nature of the offence.

This study in answering the third research question with regards to the modes of execution, it finds that the main modes through which capital punishment is carried out in Nigeria are either by hanging or execution by firing squad. These forms of executions are lawful and have been used during the execution of the death sentence. However, executions have become rare, leading to the existence of numerous death row prisoners.

With regards to the fourth research question, the idea that capital punishment serves as a means of discouraging crime still lacks evidence. Even with the practice of capital punishment in Nigeria, offenses of murder, robbery with firearms, terrorism, and kidnapping occurs frequently and that the commission of these offense could be attributed to situations like poverty, unemployment, insecurity, poor law enforcement measures, corruption, and discrimination among others.

Finally, with reference to the fifth research question it is obvious that there are legal and human rights concerns that are raised regarding capital punishment. This is because capital punishment by its nature is irreversible and its irrevocability means that there is an unavoidable risk of executing an innocent person or persons because of a wrongful conviction, judicial mistake, or any irregularity in the judicial process. The research also finds out that prolonged periods of stay on the death row are tormenting or traumatising, because long incarceration on the death row can cause psychological pain to prisoners. It raises issue regarding the question of prisoners right to dignity and humane condition of detention. This study also finds that death penalty is against the current principles of human rights which is the protection of human life, right to human dignity, and right to redemption and rehabilitation for those found guilty. It differs from every other punishment prescribed in legal systems of the world in a way that its application will permanently prevents the accused from repenting.

Despite capital punishment been legally recognized under the Nigerian criminal justice system, its effectiveness and its use as a punitive tool, however, has remained an arguable question on whether its impact as deterrent has been successful and whether it is morally permissible.

5.2 Recommendation

Firstly, there is a need for Nigeria to re-examine the continuous practice of capital punishment in its justice system given the vast legal, moral and human rights issues that surround its administration. Due to its irreversible nature, the death penalty is unsuited for a criminal justice system still struggling with gaps in investigative practices, procedural irregularities and cases of wrongful conviction. Nigeria should therefore move towards progressive abolition and alternative sentences like life imprisonment or rehabilitation.

Secondly, Government must reform the criminal justice system by strengthening investigations, forensics and evidence gathering practices so that the state does not have to rely on confessional statements alone. Law enforcement agencies must be monitored to ensure professionalism and respect for suspects' rights during criminal investigations. The legal aid system needs reform to ensure that all persons, especially indigent accused, receive qualified legal counsel throughout the criminal justice process so that they have a fair trial and reduce chances of a miscarriage of justice.

Thirdly, the criminal justice system of Nigeria, should work in line with international human rights standards recognizing the sanctity of human life, the inherent dignity of every person and their right to humane treatment. Efforts should also be intensified to bring the justice system to meet the goals of rehabilitation and restorative justice, rather than perpetuating state sponsored killings.

Lastly, it must be emphasized that the state should also focus its efforts on the actual causes of crime, like, lack of education, employment, insecurity, and poverty; since the provision of social services and rehabilitation will address more crime and provide more tangible results to the society than capital punishment.

5.3 Conclusion

Although capital punishment remains legally recognized in Nigeria criminal justice system, however, given the numerous ethical, legal, and human rights issues that are present in its application, there is no justification for upholding it. Capital punishment is considered ineffective in serving as a deterrent for crime, it has also been considered as being a hazard to defendants when there are events or situations of wrongful convictions, unfair procedures and long suffering in the condemned cell and considering the irreversible nature of capital punishment were an accused who upon conviction has been executed and later, was found to be innocent. Nigeria must therefore move for the abolition of capital punishment and establish a more humane and acceptable alternative that protects and venerates human life, dignity and rehabilitative justice, as opposed to state administered death.

BIBLIOGRAPHY

Books

Agomoh U, *The Death Penalty in Nigeria: A Human Rights Perspective* (PRAWA 2006).

Aguda TA, *Criminal Law and Procedure of the Southern States of Nigeria* (Sweet & Maxwell 1980).

Akinseye-George Y, *Legal System, Corruption and Governance in Nigeria* (New Century Law 2008).

Ashworth A, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press 2015).

Ashworth A and Zedner L, *Preventive Justice* (Oxford University Press 2014)'.
'

Bentham J, *An Introduction to the Principles of Morals and Legislation* (Clarendon Press 1789).

Blackstone W, *Commentaries on the Laws of England* (vol 4, 1769).

Christie N, *Crime Control as Industry* (2nd edn, Routledge 2000).

Elias TO, *The Nigerian Legal System* (Routledge 1963).

Enabulele AO, *Implementation of Human Rights in Nigeria* (Ambik Press 2009).

Foucault M, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan tr, Vintage 1979).

Garner BA (ed), *Black's Law Dictionary* (11th edn, Thomson Reuters 2019).

Hart HLA, *Punishment and Responsibility* (Oxford University Press 1968).

Hood R and Hoyle C, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015).

Kant I, *The Metaphysics of Morals* (Mary Gregor tr, Cambridge University Press 1996).

Kramer MH, *The Ethics of Capital Punishment* (Oxford University Press 2011).

Nwabueze BO, *Constitutional Democracy in Africa* (Spectrum Law Publishing 2003).

Obilade AO, *The Nigerian Legal System* (Sweet & Maxwell 2001).

Okonkwo CO and Naish ME, *Criminal Law in Nigeria* (Sweet & Maxwell 1964).

Oputa CA, *Human Rights in the Political and Legal Culture of Nigeria* (Fourth Dimension Publishing 1996).

Osinbajo Y, *Cases and Materials on Nigerian Criminal Law* (Oxford University Press 1990).

Rawls J, *A Theory of Justice* (rev edn, Harvard University Press 1999).

Schabas WA, *The Abolition of the Death Penalty in International Law* (3rd edn, Cambridge University Press 2002).

Von Hirsch A, *Doing Justice: The Choice of Punishments* (Northeastern University Press 1976).

Von Hirsch A, *The Thinking Prison: Reflections on Penal Reform* (Oxford University Press 2003).

Walker N, *Why Punish?* (Oxford University Press 1991).

Williams G, *Textbook of Criminal Law* (2nd edn, Stevens 1983).

Journal Articles

Aderemi A, 'Death Row Phenomenon in Nigeria' (2015) 6 *Nigerian Journal of Criminal Law*.

Akanbi MM, 'Judicial Attitudes to Capital Punishment in Nigeria' (2011) 14(2) *Nigerian Law Journal*.

Archibong EJ, 'Right to Life and the State's Power to Kill: The Quandary over Death Penalty in Nigeria' (2023) 26 *Journal of Legal, Ethical and Regulatory Issues*.

Afangideh MB, 'Capital Punishment in Nigeria: A Theological Approach' *Master's Dissertation, University of Malta, Faculty of Theology* (2011).

Ajilogba AH and Kamal R, 'Reassessing the Rationale for Capital Penalties Across Nigeria's Criminal Codes' (2026) *Social Science Research Network*.

Badejogbin O, 'Onuoha Kalu v The State and Flaws in Nigeria's Death Penalty Jurisprudence' (2018) 18 *African Human Rights Law Journal*.

Hart HLA, 'Prolegomenon to the Principles of Punishment' (1959) 60 *Proceedings of the Aristotelian Society*.

Muhammed Mikaaeel AA, 'Capital Punishment in Nigerian Courts: The Position of Abolitionists vis-à-vis Islamic Jurisprudence' *Faculty of Law, Ekiti State University, Ado-Ekiti*. (2021).

Nagin DS, 'Deterrence in the Twenty-First Century' (2013) 42 *Crime and Justice*.

Nwankwo C, 'Crime Control and the Death Penalty in Nigeria' (2010) 4(1) *African Journal of Criminology*.

Olutola AA, 'Punishment of Crime in Nigeria and South Africa: Some Perspectives on Capital Punishment' (2020) 20(2) *The Oriental Anthropologist*.

Taiwo AE, 'Justifications, Challenges and Constitutionality of the Penal Aspects of Shari'ah Law in Nigeria' (2008) 17(1) *Griffith Law Review*.

Zedner L, 'Dangerousness and the Criminal Justice System' (2007) 51 *Current Legal Problems*.

Dissertations

Afangideh MB, 'Capital Punishment in Nigeria: A Theological Approach' (Master's Dissertation, University of Malta 2011).

Reports

Amnesty International, Nigeria: Waiting for the Hangman (Amnesty International 2008) AFR 44/020/2008.

Amnesty International, Nigeria: Why the Death Penalty is No Deterrent to Violent Crime (Amnesty International 2004) AFR 44/033/2004.

The Commonwealth Ministerial Action Group, The Commonwealth v Nigeria Report (Commonwealth Secretariat 1995).

United Nations Office on Drugs and Crime (UNODC), Nigeria Training Module on Investigative Interviewing, the Right to Remain Silent and the Prohibition of Torture (UNODC 2022).

Online Sources

Afangideh MB, 'Capital Punishment in Nigeria: A Theological Approach' (Master's Dissertation, University of Malta, Faculty of Theology 2011) <<https://www.um.edu.mt/library/oar/handle/123456789/73177>> accessed 9 June 2026.

Ajilogba AH and Kamal R, 'Reassessing the Rationale for Capital Penalties Across Nigeria's Criminal Codes' (SSRN, 3 April 2026) <<https://ssrn.com/abstract=6237938>> accessed 9 June 2026.

- Amnesty International, Global Report: Death Sentences and Executions 2024 (Amnesty International USA 2025) <<https://www.amnesty.org/en/documents/act50/8805/2025/en/>> accessed 4 February 2026.
- Amnesty International, 'Recorded Executions Hit Their Highest Figure Since 2015' (9 April 2025) <<https://www.amnesty.org/en/what-we-do/international-justice/>> accessed 4 February 2026.
- Amnesty International, Petition to End the Death Penalty in Nigeria <<https://www.amnesty.org>> accessed 7 June 2026.
- Amnesty International, 'UN Member States Move Closer to Rejecting the Death Penalty' <<https://www.amnesty.org/en/latest/news/>> accessed 9 June 2026.
- Amnesty International, Women and the Death Penalty in Nigeria (Amnesty International) <<https://www.amnesty.org/en/>> accessed 9 June 2026.
- Amnesty International Nigeria, End the Death Penalty in Nigeria Campaign <<https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/>> accessed 9 June 2026.
- Anaba I, 'Confessional Statements Obtained by Torture Common in Nigeria — LEDAP' Vanguard (Lagos, 5 February 2015) <<https://www.vanguardngr.com/2015/02/confessional-statements-obtained-torture-common-nigeria-ledap/>> accessed 7 June 2026.
- Illah O and Mogom A, 'A Sociological Assessment of Capital Punishment in Nigeria' (2017) <https://www.researchgate.net/publication/326226300_A_SOCIOLOGICAL_ASSESSMENT_OF_CAPITAL_PUNISHMENT_IN_NIGERIA> accessed 9 June 2026.
- Muhammed-Mikaaeel AA, 'Capital Punishment in Nigerian Courts: The Position of Abolitionists vis-à-vis Islamic Jurisprudence' (Faculty of Law, Ekiti State University, Ado-Ekiti 2020) <https://www.researchgate.net/profile/Ahmed-Muhammed-Mikaaeel/publication/349368634_Capital_Punishment_in_Nigerian_Courts_The_Position_of_Abolitionists_vis-a-vis_Islamic_Jurisprudence/links/614c502ca3df59440ba4d92b/Capital-Punishment-in-Nigerian-Courts-The-Position-of-Abolitionists-vis-a-vis-Islamic-Jurisprudence.pdf> accessed 9 June 2026.
- Olutola AA, 'Punishment of Crime in Nigeria and South Africa: Some Perspectives on Capital Punishment' (2020) 20(2) The Oriental Anthropologist 276 <<https://journals.sagepub.com/doi/abs/10.1177/0972558X20952658>> accessed 9 June 2026.

Taiwo AE, 'Justifications, Challenges and Constitutionality of the Penal Aspects of Shari'ah Law in Nigeria' (2008) 17(1) Griffith Law Review 183
<<https://doi.org/10.1080/10383441.2008.10854607>> accessed 9 June 2026.