

**A COMPARATIVE LEGAL PERSPECTIVE ON CONSTITUTIONALITY OF
THE DEATH PENALTY IN NIGERIA.**

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GOU/U21/LAW/348

SUPERVISOR: JOY OBIANUJU NNANI

JULY, 2026

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

SUPERVISOR: MRS. JOY OBIANUJU NNANI

JULY, 2026

DECLARATION

I declare that this research work titled ‘A COMPARATIVE LEGAL PERSPECTIVE ON THE CONSTITUTIONALITY OF THE DEATH PENALTY IN NIGERIA’ has been carried out by me in the Faculty of Law, Godfrey Okoye University, Enugu. The information derived from the literature has been duly acknowledged in the text and a list of references provided. The content of this work is original and has not been submitted in part or full to this university or any other institution or body for the award of any degree or diploma.

EXCEL CHIDUMEBI OBI-JOHNSON.
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CERTIFICATION

This is to certify that this project research titled A COMPARATIVE LEGAL PERSPECTIVE ON THE CONSTITUTIONALITY OF THE DEATH PENALTY IN NIGERIA, was written and carried out by **Excel Chidumebi Obi-Johnson** and was duly under my supervision in partial fulfillment of the requirements for the award of the degree of Bachelor of Laws (LL.B) of Godfrey Okoye University.

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Date

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Date

External Examiner

Date

DEDICATION

I dedicate this project research first and foremost to God Almighty, who has continuously given me replenishing strength to carry out this project and has been with me even when I started faltering.

To my grandmother, Late Mrs. Mercy Okeh who kept on encouraging and advising me in my academic journey. My parents, Mr and Mrs Obi-Johnson for their unwavering support, shouts, encouragements and financial support throughout this process.

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LIST OF ABBREVIATIONS

AC	Appeal Cases
ACHPR	African Charter on Human and Peoples' Rights
ACJA	Administration of Criminal Justice Act
AG	Attorney-General
All NLR	All Nigeria Law Reports
CA	Court of Appeal
CAR	Criminal Appeal Reports
CC	Constitutional Court
CCPR	Human Rights Committee
CFRN	Constitution of the Federal Republic of Nigeria
CLR	Current Law Reports
CRC	Convention on the Rights of the Child
DPP	Director of Public Prosecutions
EKLR	Electronic Kenya Law Reports
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
JELR	Judgments of the English Law Reports
KJV	King James Version
LFN	Laws of the Federation of Nigeria
LPELR	Law Pavilion Electronic Law Reports

NWLR	Nigerian Weekly Law Reports
OAU	Obafemi Awolowo University
SC	Supreme Court
UN	United Nations
UNGA	United Nations General Assembly
UNTS	United Nations Treaty Series
UK	United Kingdom
US	United States
Vol.	Volume

ABSTRACT

This study examines the constitutionality, legal framework and application of the death penalty in Nigeria from a comparative legal perspective. Using a doctrinal research methodology, it analyses constitutional provisions, statutory enactments, judicial decisions, international human rights instruments and scholarly opinions on capital punishment. The study traces the historical development of the death penalty in Nigeria from the pre-colonial era through colonial administration to the present democratic dispensation, noting its continued constitutional recognition under section 33(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The research further compares Nigeria's retentionist approach with the position in selected African and non-African jurisdictions, including South Africa, Ghana, Rwanda, the United Kingdom, Canada, France and Germany, many of which have abolished capital punishment in favour of the protection of human dignity, the sanctity of life and rehabilitative justice. It evaluates the deterrence, retributive and abolitionist theories underlying capital punishment and assesses whether the death penalty effectively achieves its objectives of crime prevention and justice. The study finds that although the death penalty remains constitutional in Nigeria, its application is challenged by concerns relating to wrongful convictions, procedural deficiencies, prolonged death-row incarceration and increasing international pressure for compliance with human rights standards. It concludes that the global trend favours the abolition or restriction of capital punishment. Consequently, the study recommends comprehensive legal and policy reforms, including enhanced procedural safeguards, greater judicial discretion in sentencing, improved criminal justice administration and a gradual shift towards alternative punishments that uphold public safety while respecting fundamental human rights.

CHAPTER ONE

INTRODUCTION

1.1. Background to the Study.

Capital Punishment is controversial and is a well-known universal concept. Amongst the issues that criminal punishment raises, none of them has been a great subject of controversy as death penalty. This research explores the evolution and origin of capital punishment. The earliest history of death penalty laws dates back to the 18th century B.C., the penalty of death appears in the Code of King Hammurabi of Babylon, which is now Iraq, the Hammurabi Code,¹ which was engraved on stone tablets for members of the public to see, prescribed the death penalty for over 20 different offenses and depending on your social status, you could be executed for theft, perjury, and other crimes that today are punished much more lightly in most countries.²

During the 1700s, over 200 crimes were punishable by death in Britain.³ Capital offenses included theft, cutting down a tree, and poaching, however, due to the severity of the death penalty, many juries looked for ways to reduce the charges at trial and by 1861, the death penalty was only available for murder, treason, piracy, and arson in the Royal Dockyards.⁴ In *Furman v. Georgia*,⁵ the U.S. Supreme Court banned the death penalty nationwide, ruling that its application in the cases before it was arbitrary and discriminatory, it found that, as constituted, the death penalty violated the Eighth Amendment ban on cruel and unusual punishment.⁶ In the United States, a death sentence guarantees a lengthy battle in the appellate courts, in the federal courts, prosecutors and law enforcement seeking capital charges must secure the approval of the Attorney General and when the government takes the death penalty

¹ Death Penalty Information Centre, 'Early History of the Death Penalty' (Death Penalty Information Centre) <<https://deathpenaltyinfo.org/facts-and-research/background/history-of-the-death-penalty/early-history-of-the-death-penalty>> accessed 5 June 2026.

² John Mascolo, 'History of Death Penalty Laws' <<http://www.findlaw.com/criminal/criminal-procedure/history-of-death-penalty-laws.html>> accessed 2 February 2026.

³ Ibid.

⁴ Ibid.

⁵ 408 U.S. 238, 1972.

⁶ John Mascolo, 'History of Death Penalty Laws' <<http://www.findlaw.com/criminal/criminal-procedure/history-of-death-penalty-laws.html>> accessed 2 February 2026.

off the table, the harshest sentence becomes life in prison without the possibility of parole.⁷ Before the British came to colonize Nigeria, traditional African communities used capital punishment for serious offences in order to maintain the community peace and security.⁸ In pre-colonial Nigeria, it is important to mention that the Yoruba people's justification for the administration of capital punishment is based on their philosophy of "a life for a life" (literal retribution) or permanent removal of the offender.⁹ In the traditional folklore of the Yoruba people, beheading also seems to have the most common method of execution.¹⁰

In differentiation of the Yoruba people, the Igbo people reserved capital punishment for those who commits murder considering it as a grave offence against the victim and the Igbo gods this is because the offence of murder carried severe sentence of death because it was considered a grievous and abominable act or in a more traditional sense seen as "Alu".¹¹ The arrival of the British colonial rule in Nigeria significantly impacted the application of capital punishment. Section 33 of the constitution¹² provides for right to life but it also permits the state to execute individuals in execution of the sentence of a competent court for criminal offence. International organizations have been pushing for the death penalty's abolition more and more in recent decades. Resolutions advocating for a worldwide moratorium on executions with the goal of eventual elimination have been frequently passed by the UN General Assembly.¹³ These resolutions represent the growing international consensus in favour of human rights protection and the prohibition of state-sanctioned executions, even though they are not legally enforceable. Nigerian federal and state laws continue to apply the death penalty for a variety of crimes. However, human rights organizations have expressed concerns about the death

⁷ Ibid.

⁸ Emmanuel C Onyeozili and Obi NI Ebbe, 'Social Control in Precolonial Igboland of Nigeria' (2012) 6(1–2) *African Journal of Criminology and Justice Studies* <<https://digitalscholarship.tsu.edu/ajcjs/vol6/iss1/3/>>accessed 5 June 2026.

⁹ Aborisade Olasunkanmi 'Interrogating Capital Punishment and Indigenous Yoruba African Culture' (2016) *International Journal of History and Philosophical Research* 25.

¹⁰ Ibid.

¹¹ K E Ikenga Oraegbunam, 'Crime and Punishment in Igbo Customary Law: The Challenge of The Nigerian Criminal Jurisprudence' (2010) 7 *OGIRISI: A new Journal of African Studies* 15.

¹² Constitution of the Federal Republic of Nigeria 1999 (as amended) Chapter IV.

¹³ United Nations General Assembly Resolution 77/222, 'Moratorium on the Use of the Death Penalty' (15 December 2022) UN Doc A/RES/77/222.

penalty's conformity with modern human rights norms, the impartiality of criminal trials, and extended incarceration on death row. These worries have fuelled continuous discussions on whether Nigeria's criminal justice system should keep, change, or do away with the death penalty. Laws enacted like the Robbery and Firearms act, the Terrorism Prevention Act, Criminal code, Penal Code, Administration of Criminal Justice Act amongst others, covers and provides death penalty as punishment for capital offences. Death penalty in Nigeria is usually by hanging, firing squad, lethal injection, stoning (in Sharia penal codes in some northern states) and is still being used as a legal punishment for some offences considered grievous under Nigerian law. Throughout legal history, the death penalty has continued to be one of the most contentious types of criminal punishment. In addition to its historical roots in ancient Babylon, the death sentence was extensively used in ancient societies like Egypt, Greece, and Rome for a variety of crimes, including treason, murder, religious offenses, and military offenses. The idea that punishment should be commensurate with the seriousness of the crime committed was reflected in the ancient Roman concept of *jus talionis*, or the law of retaliation, which impacted the application of death sentences.¹⁴

1.2. Statement of the Problem

This paper examines the complex problems associated with death penalty within the Nigerian context. People get death penalties on a daily basis in states in response to the committing of certain crimes. In certain countries, people get death sentences for committing drug offenses which do not qualify as cases that deserve death penalty under international laws and standards while in other countries, the death penalty can only be issued for security crimes and murder. At times, death sentences are delivered in unfair trials and appeals; people spend many years in death row without knowing when their time is up or if they will ever see their families one last time.¹⁵ There is a problematic view on the punishment for death penalty due to poor

¹⁴ David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Harvard University Press 2010) 23.

¹⁵ RJ Tabak, 'Death of Fairness: The Arbitrary and capricious imposition of the death penalty in the 1980s' *Review of Law and Social Change* (1986) <<https://www.ojp.gov>> accessed 5 May 2026.

judgement and lack of credible evidence which may result to death penalty because it is seen an effective way or method to prevent crime.¹⁶ The execution of innocent persons that can be irreversible when carried out is risky as the justice system is executed by humans and human beings are bound to make mistakes.

Errors can be made during judgement and the innocent executed for a crime they are oblivious to, which makes it impossible to bring them back from the dead and their family left to mourn their loved ones.¹⁷ The application of the death penalty on individuals may be discriminatory based on socioeconomic status and those with poor background who cannot afford a good and effective legal representation. *Onuoha Kalu v. The State*¹⁸ is a locus classicus on the subject of death penalty in Nigeria.¹⁹ The death penalty may be constitutional under Nigerian law but the basis of imposing the sentence in most cases is constitutionality flawed.²⁰ Other cases that mentioned the constitutionality of the death penalty are *Joseph Amoshima v. The State*,²¹ *Francis Odili v. The State*²² and *Anthony Isibor v. The State*,²³ which challenged but yet fell back on the case of Kalu to maintain that death penalty is not inherently unconstitutional and recent jurisprudence do often challenge the mandatory application of such death sentences. Capital punishment does not allow for the possibility of rehabilitation which is a chance for the individuals to change and be reformed.

¹⁶ Amnesty International, *Death Penalty Has No Proven Deterrent Effect on Crime and Is the Ultimate Cruel, Inhuman and Degrading Punishment* (23 February 2021) <<https://www.amnesty.org/en/documents/ior40/3737/2021/en/>> accessed 5 May 2026.

¹⁷ Ibid.

¹⁸ [1998] 13 NWLR 531.

¹⁹ Oluwatoyin Badejogbin, 'Onuoha Kalu v The State and Flaws in Nigeria's Death Penalty Jurisprudence' (2018) 18(2) *African Human Rights Law Journal* 551, 552 <<https://www.ahrlj.up.ac.za/badejogbin-o>> accessed 5 June 2026.

²⁰ Oluwatoyin Badejogbin, 'Onuoha Kalu v The State and Flaws in Nigeria's Death Penalty Jurisprudence' (2018) 18(2) *African Human Rights Law Journal* 551, 551 <<https://www.ahrlj.up.ac.za/badejogbin-o>> accessed 5 June 2026.

²¹ [2011] 14 NWLR (Pt.1268).

²² [1977] 4 SC 1.

²³ [2002] 4 NWLR (Pt.758) 741; [2002] 2 CLR 2© (SC).

1.3. Research Questions

This research will address the following questions:

1. What is the constitutionality of the death penalty in Nigeria?
2. What is the legal basis for death penalty under Nigerian statutory and constitutional law?
3. How is death penalty regulated in Nigeria compared to other countries?
4. What is the international human right standard on death penalty?
5. What crimes attract the death penalty in Nigeria?

1.4. Aim and Objectives of the Study

The aim of this study is to comprehensively examine, analyse and compare the effect of death penalty as punishment in societies, focusing on its execution, psychological factors and legal framework.

The objectives of this study are as follows:

1. To analyse the constitutionality of the death penalty in Nigeria.
2. To examine the legal basis for death penalty under Nigerian statutory and constitutional law.
3. To compare Nigeria's death penalty regime with selected countries.
4. To access the judicial attitude and decisions on the constitutionality of capital punishment in Nigeria.
5. To propose legal and policy reforms aimed at ensuring justice, human rights protection and constitutional compliance.

1.5. Scope and Limitations of the Study

This study concerns itself with the issues of the constitutionality of death penalty in Nigeria and other acts or laws made to aid the execution of death penalty. In order to determine the best and possible method to recommend when giving punishments, the scope of this paper explores a number of laws and acts and provides a comparative research of death penalty in Nigeria and other countries. There are other aspects of the research area which have not been included in the present research and this is because the subject matter is too wide and can be a sensitive topic. The geographical research is limited to few countries: both, African (South Africa, Ghana, Kenya, Uganda and Rwanda) and Non-African states (United Kingdom, Canada, France, Germany) in order to maintain effectiveness because other countries may have vast opinion about the subject matter and this research may not be able to accommodate them. The research content would revolve around the countries to be mentioned as they have some connections to Nigeria.

On the other side, the limits were related to the researcher's inability to ask individuals what they think about the topic; yet, as they are not authorities, their opinions will not be respected. This problem has impacted the research by a margin and this is because people's voices are not heard or put in writing. Time frame given to this research is little and is seen as a hindrance to the betterment of the research in the course of study. The research was conducted with some constraints and one of these restrictions is not knowing what is going on in the judges and governors mind when exercising their power and authority and we can only be left to speculate about what they really thought on such matters. Another setback is the ever-evolving nature of law. As it is known, law is not static, it keeps on changing and adapting to every circumstance it finds itself in. There may be some resource limitations and not enough time to investigate and explore all facets of the subject in some aspects of the subject which made it necessary to give certain regions more weight than others in the study. The study's depth has also been impacted by the researcher's lack of experience.

1.6. Significance of the Study

The study of death penalty as a capital punishment has its significance as it deals with human life and the right of life of citizens of a state. In this study, the constitutionality of death penalty will be made bare, examining the pros and cons of the subject matter in order to know the best approach of dealing with it in Nigeria. Additionally, this research looks at strategies and global best practices from nations that still practice death penalty as a punishment, nations who wants to stop it and nations who have stopped death penalty as a punishment. This study importance transcends national boundaries and provides a worldwide viewpoint on the interaction between Nigeria and other countries. This study adds to the ongoing debate on death penalty as a capital punishment. It promotes a better understanding of the difficulty judges; government and the nation faces as a whole and possibilities of law changing.

1.7. Research Methodology

The study adopts the doctrinal research design. Data used in this research will be sourced from both primary and research sources. Primary sources include legislation, case laws from both international and local jurisdictions, and pertinent court rulings. Secondary sources of data are opinions and findings in relevant law books, journals, articles, papers, textbooks and internet sources where relevant materials related to this research will be extracted. The data collected will be subjected to content analysis.

1.8. Literature Review

According to data from many studies, the death penalty is constitutional since it has sparked scholarly debate in a number of states, especially about the conflict between the right to life and the state's authority to apply the death penalty. The Constitution of the Federal Republic of Nigeria 1999 (as amended) clearly provides for both the right to life and its deprivation under specified conditions, and thus makes this particular argument very significant in Nigeria. In an attempt to locate Nigeria in the international community through a review of the literature, criticism of these academic arguments would be made through comparative analysis. The

issues raised cover various views, ranging from human rights-based criticisms to very strong retentionist arguments. In almost all cases, the literature begins by considering the death sentence within the wider context of punishment, including incapacitation, retribution, and deterrence. According to the deterrence school, the death sentence serves as a signal to potential offenders, while according to the retributive philosophy, it is simply a justified punishment for heinous offences.²⁴ In his comparative analysis, Stephen Anditi²⁵ claims that retentionist regimes generally support the use of capital punishment because of their social protective and deterrent motives, even in the absence of conclusive empirical evidence.

In a similar vein, Gabriel Olufemi²⁶ notes that the death penalty is still upheld in Nigeria as an essential instrument for dealing with grave crimes like murder and armed robbery. Critical academics, however, contest these explanations. According to Olatunbosun,²⁷ the Nigerian criminal justice system inherited a colonial framework that is primarily punitive and places more emphasis on retaliation than rehabilitation. Abolitionist academics who contend that contemporary criminal justice systems need to prioritize reformative justice over permanent punishment support this criticism. The constitutional validity of the death penalty under Nigerian law is a major topic in the literature. The right to life is guaranteed under Section 33(1), but there is an exception in cases where a person is deprived of life in order to carry out a judicial sentence after being found guilty of a crime.²⁸ According to Taiwo,²⁹ this clause essentially constitutionalizes the death sentence and makes it lawful under Nigeria's constitution. Similarly, Simeon Akala and Victoria Amadikwah³⁰ maintain that the right of life

²⁴ Internet Encyclopedia of Philosophy, 'The Moral Permissibility of Punishment' < <https://iep.utm.edu/m-p-puni/> > accessed 5 June 2026.

²⁵ Stephen Anditi, *Comparative Perspectives on the Death Penalty: Retentionist and Abolitionist Approaches* (Springer 2020) 78.

²⁶ Gabriel Olufemi, 'An Analysis of Capital Punishment and Due Process in Nigeria' (2024) *Political Science and Administration Journal* 66.

²⁷ Ismaila Olatunbosun, *A Critical Analysis of Death Penalty in Nigeria* (OAU Press 2015).

²⁸ Constitution of Federal of the Republic of Nigeria 1999 (as amended).

²⁹ Taiwo Lawrence Olawoye, 'Death Penalty as an Affront to Humanity and Global Civilisation: Nigeria as a Case Study' (2022) 2(2) *UCC Law Journal* 41–74.

³⁰ Simeon Akala and Victoria Amadikwah, 'Constitutionality of Death Penalty and Right to Life in Nigeria' (2022) <<https://barristerng.com/constitutionality-of-death-penalty-and-right-to-life-in-Nigeria-by-simeon-akala-victoria-chinonso-amadikwah/>> accessed 5 June 2026.

in Nigeria is qualified rather than absolute, thereby permitting capital punishment under due process of law. However, a critical perspective is taken by certain academics. Onyekachi Duru and others³¹ contend that although the death sentence is legal under the Constitution, it is becoming more and more at odds with changing international human rights norms. They argue that modern standards of justice and human dignity should be reflected in constitutional interpretation, which should not be static. A significant portion of the literature is this comparative examination, which sheds light on how various legal systems handle the death penalty's legitimacy.

Although these jurisdictions acknowledge the death sentence, Dorcas Bowen's³² comparative study shows that there are notable differences in the frequency of application and procedural safeguards. Some African nations and retentionist governments like Nigeria still have the death penalty in place. As a result of their fundamental commitment to the sanctity of human life, abolitionist nations like the United Kingdom, on the other hand, have totally abolished the death sentence. According to Olatunbosun,³³ the elimination of the death penalty in these jurisdictions is consistent with more general developments in international human rights. Eric Muma³⁴ notes that many African constitutions, such as Nigeria's, protect the right to life but have provisions that allow for the death penalty. This dichotomy exists due to the changing legal context characterized by states increasingly adopting abolitionist approaches, at the same time ensuring their constitution guarantees the right to inflict death penalties. According to human rights theorists, the death penalty can be a cruel, brutal, or degrading punishment, and does not conform to human dignity. Olawoye³⁵ notes that the death penalty is "an affront to humanity," and continued usage will be detrimental to the global fight for the protection of

³¹Onyekachi W Duru, Ndubuisi A Nwafor and Chioma O Nwabachili, 'Thou Shall Not Kill: The Constitutionality of Death Penalty under Nigerian Legal System' (2018) 16(1) *Issues in Legal Scholarship*.

³²Dorcas Adesola Thanni, 'Comparative Analysis of Death Penalty Laws in Nigeria, China and Uganda' (2025) 2(1) *LexScriptio: Journal of the Department of Jurisprudence and Public Law* 119–136.

³³Olatunbosun (n 27).

³⁴Eric Che Muma, 'The Constitutionality/Constitutionalisation of the Death Penalty in Cameroon and Ghana: An Appraisal on the Right to Life' (2018) 2(2) *RAIS Journal for Social Sciences* 75.

³⁵Olawoye (n 29).

human rights. In similar terms, Andah and Dominic³⁶ note that international human rights law is gradually embracing an abolitionist approach, which puts retentionist states under normative pressure to change their laws. One of the rationales behind the irrevocability of the death penalty is that it increases the chances of injustice, especially in judicial processes where adequate procedural measures are lacking. There are also some procedural problems in the way Nigeria carries out the death sentence. Olufemi³⁷ points out inconsistencies between the definition and prosecution of capital offenses. Scholars also point out structural problems like the potential for erroneous convictions, inadequate jail conditions, and protracted delays on death row.³⁸ Because of these worries, some academics contend that even if the death penalty is legal under the constitution, there are significant issues with justice and fairness in its actual use.

According to the literature, there are three main viewpoints. The retentionist viewpoint emphasizes deterrence and retaliation while defending the death penalty on utilitarian and constitutional grounds. According to the abolitionist perspective, the use of death penalty does not conform with the prevailing justice systems and human rights. The reformist perspective adopts a middle-ground position as it supports additional protection and abolition of mandatory death penalties, although recognizing the constitutional legitimacy of death penalty. The abolitionist viewpoint is represented by Duru and others,³⁹ form part of the abolitionist camp in their argument that death penalty is no longer relevant and should be substituted with other options such as life in jail. The retentionist scholars assert, however, that constitutional approval provides sufficient legal basis for its continued application. The death penalty literature in Nigeria highlights how human rights, comparative jurisprudence, and constitutional law intertwine in complex ways. Although the death penalty is expressly

³⁶ Andah E. and Dominic O., 'International Human Rights Law and the Death Penalty in Nigeria: Normative Pressures for Abolition' (2020) 12 *African Human Rights Journal* 45, 48–50.

³⁷ Olufemi (n 26).

³⁸ Oluwatoyin Badejogbin, 'Onuoha Kalu v The State and Flaws in Nigeria's Death Penalty Jurisprudence' (2018) 18(2) *African Human Rights Law Journal* 551, 565–570.

³⁹ Duru and others (n 31).

permitted by the Nigerian Constitution, opinions among academics regarding its applicability in modern society are sharply split. Nigeria is still in line with retentionist countries, according to comparative study, although it is coming under increasing pressure from abolitionist movements around the world.

In the end, the discussion has moved from the specific issue of constitutional legitimacy to more general issues of justice, morality, and Nigeria's responsibilities under international law and the knowledge this study will bring is to bring in solutions that may help curb the crime rates at the same time protect human lives while putting the provision of section 33(1) of the Constitution of the Federal Republic of Nigeria above any other law which will contend it.

CHAPTER TWO

CONCEPTUAL AND THEORITICAL FRAMEWORK

2.1. Conceptual Framework

2.1.1. Death Penalty

Death is defined as the ending of life; the cessation of all vital functions and signs.⁴⁰ Death penalty is defined as a capital punishment or a penalty that makes a person or entity not eligible to participate in an activity that the person or entity previously participated in.⁴¹ The irreversibility of the death penalty is one of its main characteristics. According to Amnesty International, the penalty is considered "the highest level cruel, inhuman, and punishment that is degrading" because once it is carried out, it cannot be reversed, even in cases of wrongful conviction. This feature has made it extremely contentious in contemporary legal systems.⁴²

The fact that it is limited but acknowledged by the constitution is another significant aspect. Although the right to life is protected, section 33(1) offers an exemption in cases where a person is executed as part of a court punishment after being found guilty of a crime.⁴³ This creates the legal basis for the death penalty in Nigeria. The death sentence is only allowed in certain situations and can only be applied for the most heinous offenses. It can only be applied following due process, which includes a trial and conviction by an appropriate court.⁴⁴ Additionally, it is limited to major crimes because the "most serious crimes" should be those that include deliberate killing.⁴⁵ Strict adherence to a fair hearing has been emphasized by the courts. In *Okoro v State*,⁴⁶ The Supreme Court emphasized that only in cases where guilt is

⁴⁰ BA Garner (ed), Black's Law Dictionary (11th edition, West Publishing Co 2004).

⁴¹ Ibid.

⁴² E M Juan, 'The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment' *Human Rights Brief* 2014.
<https://digitalcommons.wcl.american.edu/facsch_lawrev/1428> accessed on 5 May 2026.

⁴³ Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁴⁴ United Nations, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6(2).

⁴⁵ United Nations Human Rights Committee, General Comment No.36 on Article 6: Right to Life (2018) UN Doc CCPR/C/GC/36.

⁴⁶ (1988) 5 NWLR (Pt 94) 255 (SC).

established beyond a reasonable doubt may the death penalty be upheld. This restriction attempts to stop the punishment from being abused and applied arbitrarily. Retributive and deterrent theories of punishment serve as the foundation for the death penalty. The former argues that criminals should receive a punishment commensurate with their crimes, while the latter contends that the death penalty deters future offenders from committing similar crimes.⁴⁷ Despite arguments in favour of the punishment, the death penalty is still very contentious because many international organizations and human rights groups oppose it because of the possibility of executing innocent people and because it violates the right to life. The UN General Assembly has also called for a worldwide moratorium on executions.⁴⁸

i. Historical Development of Capital Punishment

The death penalty has been applied in some communities throughout human civilization for as long as the human race. For instance, Christianity and Judaism have justified the death penalty primarily using retributive language, such as the following biblical passage ‘And if any mischief follows, then thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe.’⁴⁹ More biblical verse that support this claim is ‘whoso sheddeth man’s blood, by man shall his blood be shed: for in the image of God made he man.’⁵⁰

Nigeria's death sentence has changed throughout the course of three separate historical eras: The pre-colonial, colonial, and post-colonial era.⁵¹ During each of these eras, ideas about justice, government, and social order have changed.⁵² The literature shows that the death penalty in Nigeria is a deeply ingrained indigenous custom that was later modified by colonial

⁴⁷ Joshua Dressler, *Understanding Criminal Law* (8th edn, LexisNexis 2020) 112–15.

⁴⁸ United Nations General Assembly, Moratorium on the Use of the Death Penalty UNGA Res 62/149 (18 December 2007).

⁴⁹ Exodus 21: 23-25, Holy Bible KJV.

⁵⁰ Genesis 9:6, Holy Bible KJV.

⁵¹ EC Onyeozili and N I Ebbe, ‘Social Control in Precolonial Igboland of Nigeria’ (2012) 6(1–2) *African Journal of Criminology and Justice Studies* 77 <<https://digitalscholarship.tsu.edu/ajcjs/vol6/iss1/3/>> accessed 5 June 2026.

⁵² Ibid.

legal systems and then preserved in the country's current constitutional framework.⁵³ It is not a recent legal innovation. Evaluating its current constitutional status and legitimacy requires an understanding of its historical evolution.

a. Pre-Colonial Era

In pre-colonial societies, where legal systems were mostly customary and community-based, the death penalty first appeared in Nigeria. While the death penalty was still used for serious crimes, these systems placed a higher priority on societal peace and restorative justice than contemporary legal frameworks. According to Adeniyi Olayode,⁵⁴ pre-colonial legal systems, especially in Igbo tribes, were mainly rehabilitative and focused on preserving social harmony, with little use of severe penalties like death.

That being said, this does not imply that the death penalty is not applicable. Instead, evidence shows that it was frequently and selectively employed as a last resort. For example, in Yoruba civilization, the death penalty was applied for major crimes including murder, treason, and witchcraft because it was thought that these crimes endangered the foundation of society.⁵⁵ Rather than only punishing the culprit, punishments were frequently social and symbolic, strengthening moral and spiritual order. African law historians also note that in pre-colonial Africa, the death penalty typically served both spiritual and deterrent functions, especially in cases when crimes were thought to have supernatural ramifications.⁵⁶

⁵³ EC Onyeozili and N I Ebbe, 'Social Control in Precolonial Igboland of Nigeria' (2012) 6(1–2) *African Journal of Criminology and Justice Studies* 77 < <https://digitalscholarship.tsu.edu/ajcjs/vol6/iss1/3/> > accessed 5 June 2026.

⁵⁴ Adeniyi Olayode, 'Restorative Justice and Pre-Colonial Justice Practices in Nigeria' (2017) *Queen's University Belfast Journal*.

⁵⁵ Vine Legal, 'Traditions and Principles of Crime Punishment in Yoruba Land' (13 September 2019) <https://www.vinelegal.com.ng/2019/09/traditions-and-principles-of-crime.html> accessed 18 June 2026, Adeolu A Akinwumi, *An Integrative Notion of Punishment in Traditional Yoruba Culture* (PhD thesis, University of Ibadan 2014); Ayotunde O Alabi, 'Death Penalty: A Yorùbá Response to the Deterrence Argument' (2020) *Filosofia Theoretica: Journal of African Philosophy, Culture and Religions*.

⁵⁶ Andrew Novak, 'Capital Punishment in Precolonial Africa: The Authenticity Challenge' (2018) 50(1) *The Journal of Legal Pluralism and Unofficial Law* 71–93; Andrew Novak, 'Capital Punishment in Precolonial African Society' in Peter Hodgkinson (ed), *The Death Penalty in Africa* (Palgrave Macmillan 2014) 9–23; Thandabantu Nhlapo, 'Homicide in Traditional African Societies: Customary Law and the Question of Accountability' (2017) 17 *African Human Rights Law Journal* 1–34.

Therefore, rather than having established legal statuses, the death sentence throughout this time was ingrained in cultural, religious, and social values.

b. Colonial Era

Nigeria's application of the death penalty underwent a dramatic change with the arrival of British colonial rule in the late 19th and early 20th centuries. Indigenous customs were superseded or replaced by codified laws when colonial powers established official legal systems.⁵⁷ During this time, the British created the Penal Code (applicable in Northern Nigeria) and the Criminal Code (applicable in Southern Nigeria), both of which included the death penalty for crimes including treason and murder.⁵⁸ This signalled the transition from community-based justice to a centralized, state-run criminal justice system. Academics contend that colonial control both formalized and broadened the application of the death penalty.⁵⁹ Colonial administrations used considerable discretion when enforcing death penalties and frequently expanded the category of capital crimes.⁶⁰ The colonial goal of upholding law and order and quelling opposition was a contributing factor in its expansion. Additionally, the colonial justice system institutionalized the death penalty as a weapon of government by introducing uniform methods of execution, such as hanging. The literature also emphasizes how the death penalty was occasionally applied politically, especially to those who were thought to pose a danger to colonial power.⁶¹

⁵⁷ TO Elias, *The Nature of African Customary Law* (Manchester University Press 1956) 190–210.

⁵⁸ *Criminal Code Act* Cap C38, Laws of the Federation of Nigeria 2004 (originally enacted as Criminal Code Ordinance 1916) ss 37, 319; *Penal Code (Northern States) Federal Provisions Act* Cap P3, Laws of the Federation of Nigeria 2004 (originally Penal Code Law 1960) ss 221, 273.

⁵⁹ AO Obilade, *The Nigerian Legal System* (Spectrum Law Publishing 1979) 62–65; CM Fombad, 'Colonial Legacy and the Death Penalty in Africa' (2017) 17 *African Human Rights Law Journal* 1, 5–8.

⁶⁰ AO Obilade, *The Nigerian Legal System* (Spectrum Law Publishing 1979) 66–68; RJ Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (Oxford University Press 2000) 251–253; CM Fombad, 'Colonial Legacy and the Death Penalty in Africa' (2017) 17 *African Human Rights Law Journal* 1, 9–12.

⁶¹ Stacey Hynd, "'The extreme penalty of the law': mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47' (2010) 4(3) *Journal of Eastern African Studies* 542, 543–544.

c. Post-Colonial Era

The country retained much of the judicial structure from the era of colonization after Nigeria gained independence in 1960, including the practice of capital punishment. This continued practice of capital punishment shows the importance of politics and the continuation of law as succeeding regimes tried to maintain order in an ever-changing environment. During the military government, the application of the death penalty was significantly broadened.⁶² For instance, in response to growing worries about violent crime, the Robbery and Firearms Decree of 1984 instituted the death sentence for armed robbery.⁶³ The death sentence was also applied for political ends throughout the military era, especially under authoritarian regimes. One example of how the death penalty could be used as a tool of state power is the killing of political opponents, most notably the "Ogoni Nine" under General Sani Abacha in 1995.⁶⁴ According to academics, the death penalty became ingrained in Nigeria's political and judicial structure throughout this time, making it a crucial component of the country's criminal justice system.

d. Post-1999 Democratic Era

The Federal Republic of Nigeria's 1999 Constitution (as modified) established a new constitutional framework following the country's return to democratic rule in 1999. This Constitution clearly acknowledges the right to life, but it also allows for its deprivation when a judicial order is carried out.⁶⁵ Despite increasing calls for its removal, this constitutional clause has guaranteed the death penalty's continued legitimacy in Nigeria. The death penalty is still applied for crimes like murder, armed robbery, treason, and offenses connected to terrorism under the Criminal Code, Penal Code, and additional statutes like the Robbery and

⁶² Bonny Ibhawoh, *Imperial Justice: Africans in Empire's Court* (Oxford University Press 2013) 192–194.

⁶³ *Robbery and Firearms (Special Provisions) Decree 1984* (Decree No 5) s 1(1)– (2).

⁶⁴ Human Rights Watch, *Nigeria: The Ogoni Nine Execution* (HRW, 1995)
<<https://www.hrw.org/reports/1995/Nigeria.htm>> accessed 5 June 2026.

⁶⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s.33.

Firearms Act.⁶⁶ Even while penalties are still sometimes implemented, the current era is marked by a decrease in executions. Although Nigeria still has the death sentence, Archibong⁶⁷ points out that because of political resistance and human rights issues, executions are comparatively uncommon. There is an increasing trend toward de facto moratoriums and calls for change, even though the government has not abolished the death sentence. However, history has proven that the development of the death penalty system in Nigeria is a demonstration of the dynamics between colonial legislation, traditional practices, and post-colonial constitutionalism. There have been significant changes regarding the application of the death penalty in terms of both its development and usage since the pre-colonial era. Despite its lengthy history, current events point to a slow change in attitudes brought about by growing ideas of fairness and international human rights standards. How these conflicting forces are balanced within Nigeria's legal and constitutional framework will probably determine the future of the death sentence in that nation.

2.2. Theoretical Framework

2.2.1. Deterrence Theory

Deterrence is the act or process of preventing criminal activity, such as by preventing it out of dread of punishment.⁶⁸ Because the utilitarian's think that the death sentence can make most people happier, some schools of thought define deterrence as the constraint that fear of criminal punishment puts on those who are prone to commit crimes.⁶⁹ Notwithstanding possible objections, the tactic is what motivates those who support the death penalty and attempts to

⁶⁶ Criminal Code Act 1990 (Nigeria); Penal Code Act 1960 (Northern Nigeria); Robbery and Firearms (Special Provisions) Act 2004 (Nigeria); Terrorism (Prevention) Act 2011 (Nigeria); Yemi Akinseye-George, *Human Rights and the Death Penalty in Nigeria* (LexisNexis 2015) 45–50.

⁶⁷ G Archibong, 'The Death Penalty and Human Rights in Nigeria' (2007) 51(2) *Journal of African Law* 155.

⁶⁸ "Deterrence," Merriam-Webster.com Dictionary, <<https://www.merriam-webster.com/dictionary/deterrence>> accessed 5 May 2026.

⁶⁹ F Moneke 'Saddam Hussein's Execution: Philosophical reflections on capital punishments' (2007) *African Journal of Law and Human Rights* (AJLHR) 5.

discourage future offenses.⁷⁰ which is also affirmed by Okonkwo and Nash⁷¹ when they argued that "the idea of desert should operate merely as a limitation on this principle and the primary aim of punishment is prevention of crime by rational measures." The idea of deterrence is widely acknowledged even if there is no proof that the death sentence has a deterrent effect.⁷² Those who utilize the perceived strength of public opinion as an excuse for retention often point out that the majority of the deterrent force comes from public opinion.⁷³ In *Akinyemi v. State*⁷⁴ (per Fabiyi J.C.A), the Court of Appeals defended the death sentence, citing Moses' "an eye for an eye" statute as evidence that it is a necessary deterrent in a society full of dangerous and heartless people. By holding that the death sentence is constitutionally legitimate and not a cruel, inhumane, or degrading punishment, the Supreme Court maintained the death penalty's deterrent value.⁷⁵ Gabriel Olufemi⁷⁶ claims that in Nigeria, the death sentence is frequently justified as a means of protecting society and deterring would-be offenders, particularly in cases of armed robbery and terrorism. Since Nagin and Daniel's⁷⁷ study on the death penalty's deterrent effect is usually ambiguous and methodologically flawed, it is difficult to establish a casual relationship between executions and a decrease in crime.

The premise of deterrence theory is that people are logical agents who consider the advantages and disadvantages of their choices. This argument holds that the possibility of harsh punishment, such the death penalty, can deter future criminals from committing crimes. In *Okoro v. State*,⁷⁸ The deterrent approach to capital offenses was validated by the Supreme Court's affirmation of the validity of both the death sentence and its manner of execution. One

⁷⁰ MA Owoade, 'Some Aspect of Criminal Law Reform in Nigeria', *The Nigerian Bar Journal*, (1980) (Volume XVI) 25.

⁷¹ Okonkwo and Naish, *Criminal Law in Nigeria* (2nd edn, spectrum books limited 2003) 32 and 33.

⁷² National Research Council, 'Deterrence and the Death Penalty' (2012) <<https://nap.nationalacademies.org/catalog/13363/deterrence-and-the-death-penalty>> accessed 5 May 2026.

⁷³ Andrew von Hirsch, *Censure and Sanctions* (Clarendon Press 1993) 78–9; Michael Tonry, *Why Punish?* (Oxford University Press 2011) 112–13.

⁷⁴ (2012) 16 NWLR (Pt. 1327) 538 or (2012) LPELR-15334 (CA).

⁷⁵ *Kalu v The State* (1988) 13 NWLR 531 or (1988) LPELR-1655(SC).

⁷⁶ Gabriel Olufemi, *Capital Punishment in Nigeria: Legal and Policy Perspectives* (Lagos University Press 2015) 45–50.

⁷⁷ Daniel S Nagin and John V Pepper (eds), *Deterrence and the Death Penalty* (National Academies Press 2012) 2–4.

⁷⁸ (2012) LPELR-SC.187/2007.

of the reasons this idea is criticized is that it punishes criminals before they ever commit the crime. The lack of solid factual proof that the death sentence deters crime more successfully than other forms of punishment is one of the biggest objections. Exclusive study does not offer solid proof of the death penalty's deterrent effect, according to the National study Council assessment.⁷⁹ Deterrence continues to be a major justification for the death penalty in contemporary criminal justice discourse, especially in retentionist countries. But as scepticism about its factual validity has grown and human rights have become more important, its impact has decreased. According to recent research, punishment may have some deterrent effect on a general, but the death penalty's special deterrent effectiveness has not yet been established.⁸⁰ Many countries have been rethinking the place of capital punishment in their respective penal systems due to this.⁸¹ The deterrence theory explains why capital punishment is necessary as per utilitarian philosophy; it prevents criminal activities and ensures public safety. Its emphasis on future consequences, rational choice, and social utility distinguishes it from retributive and abolitionist theories. However, the theory faces significant challenges, particularly regarding the lack of conclusive empirical evidence and its reliance on assumptions about human behaviour. While deterrence continues to play a role in debates on capital punishment, its effectiveness as a justification for the death penalty remains deeply contested.

2.2.2. Retributive Theory

One of the earliest and most significant arguments in criminal jurisprudence for the death sentence is the retributive theory of the death penalty. The writings of Enlightenment philosophers like Immanuel Kant and Georg Wilhelm Friedrich Hegel,⁸² who maintained that punishment is a moral requirement based on justice rather than utility, provide the strongest expression of the retributive idea. Based on the idea that people are morally accountable for

⁷⁹Daniel S Nagin and John V Pepper (eds), *Deterrence and the Death Penalty* (National Academies Press 2012) 2–4.).

⁸⁰ EA Fattah, *Criminology: A Sociological Understanding* (3rd edn, Butterworths 1991) 261–3.

⁸¹ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015).

⁸² Immanuel Kant, *'The Metaphysics of Morals'* (Mary Gregor tr, Cambridge University Press 1996) 105-109.

their conduct, Kant⁸³ argued that punishment should be applied as an end in and of itself rather than as a means to an end. According to Kantian⁸⁴ thought, the death penalty is a morally acceptable punishment since a person who commits murder has forfeited their own right to life. In a similar vein, Hegel⁸⁵ saw punishment as the negation of wrongdoing and the restoration of the moral equilibrium that the crime had upset. Retributive theory has been further developed by other academics like Michael Moore,⁸⁶ who contends that punishment is appropriate because it gives offenders what they morally deserve, regardless of any deterrent or rehabilitative consequences. The concept of desert was introduced by the retributive theory, which holds that punishment should be commensurate with an individual's level of responsibility.⁸⁷ Retributivists contend that only people who willingly commit wrongdoing should be punished since moral responsibility is a necessary condition for punishment. According to Andrew Von Hirsch,⁸⁸ proportionality is essential to retributive justice since it guarantees that the severity of the offense is reflected in the punishment.

Retributivists think that death is the only appropriate punishment for some crimes, especially purposeful homicide. In support of this viewpoint, Ernest Van Den Haag⁸⁹ claims that the death sentence is the only kind of punishment that effectively and sufficiently reflects the gravity of taking a human life. According to Ernest,⁹⁰ a lighter sentence would not be fair to the victim or the community. The most traditional type of retributivism is found in the code of Hammurabi's *lex talionis*, which stands for "an eye for an eye and a tooth for a tooth." Most people think that someone who is guilty should suffer. Retributivism, according to Herbert

⁸³ Immanuel Kant, *The Metaphysics of Morals* (Mary Gregor tr, Cambridge University Press 1996) 105-109.

⁸⁴ Ibid.

⁸⁵ GWF Hegel, *Elements of the Philosophy of Right* (Allen W Wood ed, HB Nisbet tr, Cambridge University Press 1991) paras 99–101.

⁸⁶ S Michael Moore, *Placing Blame: A Theory of the Criminal Law* (Harvard University Press 1997) 4–10.

⁸⁷ Andrew von Hirsch, *Doing Justice: The Choice of Punishments* (Hill and Wang 1976).

⁸⁸ Andrew Von Hirsch, *Doing Justice: The choice of Punishments: Report of the Committee for the Study of Incarceration* (Northeastern University Press 1976).

⁸⁹ Ernest Van Den Haag, *The Ultimate Punishment: A Defense* (1986) 99 Harvard Law Review 1662
<https://www.ipl.org/Ernest-Van-Den-Haag-The-Ultimate-Punishment-A-Defence> accessed 28 April 2026.

⁹⁰ Ibid.

Hart,⁹¹ is the use of suffering as a form of punishment to a morally guilty perpetrator. Retributivists believe that punishment must be commensurate with the offense; they do not attempt to punish a criminal for potential crimes, but rather only for actual crimes done and in the appropriate quantity. According to the retributive view of retribution, a person's punishment serves as "payback" for the crimes they have committed.⁹² If we do not punish criminals, we are committing injustice since they do not get what they deserve.⁹³ Another school of thought among retributivists views punishment as a means of eliminating the unfair advantage that criminals have either during or as a result of committing a crime. For instance, if a thief breaks the law by stealing someone else's property, the punishment meted out to him should eliminate this unfair advantage.⁹⁴ The innocent can never be punished, in contrast to deterrence theory.

In his testimony before the Royal Commission on the death penalty, Lord Denning⁹⁵ noted that the ultimate justification of any punishment is not that it is deterrent but that it is the emphatic denunciation by the community of a crime. Hart⁹⁶ believes that punishment should not be meted out solely for the purpose of denunciation, but rather for a just punishment that serves as a denunciation; additionally, he believes that we do not exist in society to condemn, even though we may condemn in order to survive. Although the offenses are perceived as being against the state, the victim's relationship to the accused is crucial in a number of cases due to the potentially harmful effects of the punishment.⁹⁷ Without the assistance of the Truth and Reconciliation Commission, South Africans would not have been able to reach a form of compromise, which would have exacerbated the already severe racial split in the nation.⁹⁸ The

⁹¹ RA Duff and P Stuart Green, *Introduction: The special part and its problem in defining crimes: Essays on the special part of the criminal law* (Oxford University Press, 2005) 1-20.

⁹² John Cottingham, 'Varieties of Retribution', *Philosophical Quarterly* 29 (1979), 238.

⁹³ Thom Brooks, *Punishment* (1st, Taylor & Francis, 2012) 20.

⁹⁴ Herbert Morris, *Persons and Punishment* (Published in *Monis* 52 [1968]) 475-501.

⁹⁵ Lord Denning, 'Evidence to the Royal Commission on Capital Punishment' (1953-55) 8932, 21.

⁹⁶ HLA Hart, *Punishment and Responsibility* (1st, Clarendon Press, Oxford 1968) 5.

⁹⁷ P George Fletcher, 'The Place of Victims in the theory of Retribution' (1999) *Buffalo Criminal law review* 51.

⁹⁸ Richard A Wilson, *The Politics of Truth and Reconciliation in South Africa* (Cambridge University Press 2001) 6-15.

position concerning the retributivists is that crimes committed should have a punishment commensurate with it in order for the criminals not to go scot free thinking that they will not be punished for committing such crimes.

2.2.3. Abolitionist Theory

Abolitionism, which emphasizes justice, dignity, and moderation in the exercise of state authority, is a reflection of a long-standing progression of humanistic standards of punishment.⁹⁹ This school of thought contends that punishment ought to be reasonable and compassionate, rejecting retributive arguments in favour of the death penalty.¹⁰⁰ Abolitionist thought has its conceptual roots in the Enlightenment, especially in the writings of Cesare Beccaria,¹⁰¹ whose ground-breaking work established the framework for contemporary criticisms of the death penalty. Abolitionists contend that even in cases of grave offenses, the state has no moral right to terminate human life.

Academic research highlights the contradiction that results from the death penalty the state tries to punish murder by committing the same crime that it denounces.¹⁰² The moral authority and normative power of the law are weakened by this discrepancy. Abolitionists also argue that the death penalty is an excessive punishment, especially when it comes to non-fatal crimes like treason. Osborn¹⁰³ points out that abolitionist philosophers also emphasize how the death penalty devalues human life, contending that the state ought to preserve rather than diminish the worth of life. Abolitionists contend that the death penalty is a clear violation of the generally recognized right to life, which is an innate and fundamental right. Abolitionist principles are increasingly reflected in contemporary international legal frameworks. Scholarly study shows that the global abolition movement has been successful in redefining the death penalty as a

⁹⁹ Mugambi Jouet, 'Death Penalty Abolitionism from the Enlightenment to Modernity' (2023) 71 *American Journal of Comparative Law* 46.

¹⁰⁰ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford University Press, 1789) Book II, Chapter 10.

¹⁰¹ Cesare Beccaria, *On Crimes and Punishments* (David Young tr, Hackett Publishing 1992) Chapter 17.

¹⁰² Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, OUP 2015) 1–3.

¹⁰³ Timothy v Kaufman-Osborn, 'A Critique of Contemporary Death Penalty Abolitionism' (2006) 8(3) *Punishment & Society* 365, 372–374.

human right rather than as a domestic criminal justice issue.¹⁰⁴ As a result, international agreements and procedures have been adopted with the goal of limiting or doing away with the death penalty. Abolitionist thought challenges the practical rationale for the death sentence and its purported deterrent effect in addition to moral and legal considerations. Contrary to arguments based on deterrence, homicide rates frequently decreased after the death penalty was abolished.¹⁰⁵ In a similar vein, Jouet¹⁰⁶ observes that contemporary abolitionist arguments usually centre on structural flaws, such as racial discrimination, erroneous convictions, and arbitrary sentencing. Research indicates that the probability of receiving a death sentence is greatly influenced by variables including race, class, and the calibre of legal counsel.¹⁰⁷ The idea of equal protection under the law is broken by this disparity.

Many African nations oppose and favour the abolition of the death penalty as a form of punishment. The death sentence has recently been abolished in nations including Equatorial Guinea in 2022,¹⁰⁸ Sierra Leone in 2021,¹⁰⁹ and Chad in 2020.¹¹⁰ Some African nations, including Egypt, Somalia, Sudan, and Botswana, still apply the death penalty despite the push to abolish it. Abolitionists maintain that human life is inviolable and that it is sacrosanct. They contend that in order to punish someone, the state should not become as morally illiterate as the murderer. It is also seen in the holy bible that as long as I am alive, I do not enjoy the wicked dying; instead, I want them to change their ways and live.¹¹¹ This means that if the death sentence is applied as a punishment for crimes, the deceased will not be able to change their evil ways and come back to life.

¹⁰⁴ Roger Hood (n 102).

¹⁰⁵ D Archer, R Gartner and M Beittel, 'Homicide and the Death Penalty: A Cross-National Test of a Deterrence Hypothesis' (1983) 74 *Journal of Criminal law and Criminology* 991.

¹⁰⁶ Mugambi Jouet (n 99).

¹⁰⁷ Timothy (n 103).

¹⁰⁸ Africanews, 'Equatorial Guinea Repeals Death Penalty Law' (Africanews, 20 September 2022) <<https://www.africanews.com/2022/09/20/equatorial-guinea-repeals-death-penalty-law/>> accessed 18 June 2026.

¹⁰⁹ Amnesty International, 'Sierra Leone: Abolition of Death Penalty a Major Victory for Human Rights' (Amnesty International, 23 July 2021) <<https://www.amnesty.org/en/latest/news/2021/07/sierra-leone-abolition-of-death-penalty-a-major-victory-2/>> accessed 18 June 2026.

¹¹⁰ Amnesty International, *Death Sentences and Executions 2020* (Amnesty International 2021) 20.

¹¹¹ Ezekiel 33 verse 11.

CHAPTER THREE

LEGAL FRAMEWORK FOR THE DEATH PENALTY IN NIGERIA.

3.1. Constitutional Provisions on Right to Life

There is no right to exercise or to enforce without life. Since the enjoyment of all other human rights depends on the right to life, it is widely recognized as the most fundamental of these rights. The Federal Republic of Nigeria's 1999 Constitution, which upholds the sanctity of human life while acknowledging a few specific situations in which it may be legally taken away, firmly establishes this right in Nigeria. The purpose of this study is to conduct a critical analysis of the constitutional rights concerning life in Nigeria, the exceptions that can be made in this regard, and the implementation of the same. Section 33(1) of the constitution,¹¹² which states that everyone has the right to life and that no one shall be purposefully deprived of his life except in the execution of a court's sentence for a crime for which he has been found guilty in Nigeria, is the main provision pertaining to the right to life.

The right to life is established by this clause as a basic right that is enforceable against both the government and private citizens. It places a positive obligation on the state to safeguard its citizens' lives and a negative obligation on it to abstain from wrongful deprivation of life.¹¹³ The fact that the word "every person" is included suggests that the right is applicable to everyone on Nigerian soil, without exception. The Nigerian constitution guarantees a fundamental right to life; however, this right is not unqualified. By allowing the deprivation of life in the execution of a death sentence established by a competent court of law, Section 33(1)¹¹⁴ itself acknowledges a significant exception. Nigeria is apart from other countries that have abolished the death penalty due to the constitutional validation of the death sentence. The conditions under which a person may be lawfully deprived of life are described in Section

¹¹² Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33(1).

¹¹³ Ibid.

¹¹⁴ Ibid.

33(2).¹¹⁵ These include circumstances in which the use of force that is reasonably required to protect someone from unlawful violence, to make a legal arrest or stop someone who is legally detained from escaping, or to put an end to a riot, insurrection, or mutiny results in death.¹¹⁶ It is evident from these exceptions that there is a need for an equitable balance between societal interests such as public order and law enforcement and the rights of the individuals. However, there is a need for the constitutionally imposed force to be reasonably necessary in order to maintain standards of proportionality and accountability. There have been several decisions of the Nigerian judiciary regarding the interpretations and implementation of the right to life.

One such important case is, where the Supreme Court has stated that execution of a condemned prisoner when his appeal was pending was a gross infringement of his right to life.¹¹⁷ It was stated in this judgment that the right to life encompasses the right to avail oneself of all legal remedies before being executed. This case highlights the critical role of due process in protecting the right to life. Similarly, in, the supreme court reiterated that constitutional rights must be interpreted within the framework of the constitution as a whole, including any limitations expressly provided therein.¹¹⁸ Although, the case did not deal exclusively with the right to life, it underscores the principle that fundamental rights are not absolute and must be balanced against other legitimate state interests. The judiciary has therefore adopted an approach that seeks to preserve the essence of the right to life while recognizing the necessity of lawful limitations. Another important dimension on the right to life is the obligation of the state to prevent arbitrary killings and to ensure accountability for violations. Nevertheless, Nigeria has had many challenges in this area. There have been several extra-judicial executions carried out, especially by security forces, which have put into question whether the right to life is protected. The application of excessive force by security personnel, usually in an effort to maintain law and order, has been heavily criticized. Even though section 33(2)¹¹⁹ is the legal

¹¹⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33(2).

¹¹⁶ *Ibid.*

¹¹⁷ *Nasiru Bello v Attorney-General of Oyo State* (1986) 5 NWLR (Pt 45) 828 (SC).

¹¹⁸ *A.G. Federation v Abubakar* (2007) 10 NWLR (Pt 1041) 1 (SC).

¹¹⁹ CFRN 1999.

basis for using force under some conditions, such force must be necessary and proportional. Any misuse of this legal provision constitutes a constitutional violation. The right to life has consequences other than just preventing murder; it also includes the state's obligation to ensure that its citizens have an environment conducive to the preservation of life. It requires ensuring adequate security, good health care systems, and measures to guard against environmental risks that pose a threat to human life.

Although these issues are not specifically mentioned in section 33 ¹²⁰, they are easily recognizable as being crucial for the effective guarantee of the right to life in contemporary constitutional law. The persistence of the death penalty in Nigeria is among the most disputable issues surrounding the right to life. Though the constitution does not prohibit capital punishment, the practice of imposing such penalties has been severely criticized due to reasons like a risk of wrongful execution, non-uniformity of sentencing, and lack of consideration for human dignity. Some international instruments that guarantee human rights (e.g., the African Charter on Human and Peoples' Rights, to which Nigeria is a signatory) place great value on the principle of life protection and have contributed significantly to debates regarding the necessity to abolish the death penalty.

To conclude, the right to life guaranteed by the constitution of Nigeria can be described as a very important yet qualified right. It is enshrined in Section 33, which sets out legal guarantees for protecting individuals' lives but acknowledges some special circumstances when life may be deprived legally. One should admit that it was the judiciary that has played an essential part in interpreting these provisions and making sure that the right to life is not arbitrarily abused. However, there are practical difficulties like extrajudicial executions, police brutality, and the continuing practice of capital punishment, which necessitate reforms to further enhance the security of this fundamental right. In essence, how effective the constitutional guarantee of the right to life is will depend not only on what is provided in the legal provisions but also on the resolve of the government and its institutions to implement them.

¹²⁰ Ibid.

3.2. Criminal Code 1916

Capital punishment is still a highly controversial issue when it comes to Nigeria's criminal justice system. Although capital punishment is well rooted in the country's criminal code, there are several serious issues that arise with its execution from the perspectives of constitutional law, morality, and international law. This paper explores the issue of capital punishment with respect to its legalization, judicial authorities involved, and critically analyzes it from the perspective of international human rights legislation. Capital punishment is legalized by section 33(1)¹²¹, that grants the right to live except for the execution of the death sentence. This provision creates a constitutional exception that has been consistently relied upon by Nigerian courts to justify capital punishment.

The criminal code Act governs criminal law in southern Nigeria and provides for capital punishment in respect of certain offences. The Criminal Code Act¹²² classifies offences into felonies, misdemeanors and simple offences. Capital offences are those punished by death and they fall within the category of felonies.¹²³ The code reflects the traditional common law approach, reserving the death penalty for the most serious crimes, particularly those involving the unlawful taking of life or threats to state security. Murder, is defined under section 316 by outlining the circumstances in which a killing amount to the offence, including where the offender intends to cause death or grievous harm¹²⁴; and punishable under section 319,¹²⁵ that any person who commits murder shall be sentenced to death. The use of the word "shall" make the sentence mandatory upon conviction. Other offences attracting the death penalty include treason and treachery under section 37¹²⁶ and it provides that any person who levies war against the state, or assists an enemy in time of war, is guilty of treason and liable to death. This reflects the gravity attached to offences that threatens national security and sovereignty.

¹²¹ CFRN 1999.

¹²² Criminal Code Act, Cap C38 Laws of the Federation of Nigeria (LFN) 2004.

¹²³ Ibid.

¹²⁴ Criminal Code Act, Cap C38 Laws of the Federation of Nigeria (LFN) 2004, s 3.

¹²⁵ Ibid, s 316.

¹²⁶ Ibid, s 37.

In addition to murder and treason, section 326 provides that a person who gives false testimony leading to the execution of another may be liable to death.¹²⁷ These provisions reflect the traditional justification for capital punishment like using the retribution and deterrence theory for the most serious crimes. Under the Penal code, it is mandatory to impose death penalties for offences like murder. This implies that when an offender is found guilty, the court does not have any discretion in imposing a lighter sentence. Death by hanging has been one of the traditional methods of executing offenders but advances in technology have led to the development of new ways of executing offenders, as provided in subsidiary legislation and practice.

Due to the gravity of the crime, there are several provisions for safeguarding the interests of the accused. In particular, the prosecution needs to prove the crime beyond a reasonable doubt,¹²⁸ and the accused has a right of appeal up to the Supreme Court.¹²⁹ Moreover, the mercy jurisdiction enables the President and State Governors to reduce death sentences.¹³⁰ Furthermore, the prerogative of mercy allows the President or State Governors to commute death sentences.¹³¹ Certain categories of persons, such as minors and pregnant women, are exempt from execution. While the Criminal Code clearly provides for the death penalty, its application has been subject to debate. Nevertheless, the provisions remain valid and enforceable under Nigerian law. These provisions have been consistently upheld by the courts and operate within the constitutional allowance for capital punishment. However, on-going debates regarding fairness, human rights and judicial discretion suggest that the future of the death penalty under the code may be subject to reform.

¹²⁷ Ibid, s 326.

¹²⁸ Evidence Act 2011, s 135.

¹²⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 233.

¹³⁰ Evidence Act 2011, s 135.

¹³¹ Ibid, s 175.

3.3. Penal Code 1960

The most prominent provision on the death penalty under the penal code relates to culpable homicide. This code governs criminal law in northern Nigeria and contains several provisions prescribing death penalty for grave offences. The code reflects both common law influences and local legal traditions, particularly in its treatment of offences against the person and the state. Section 221 provides that culpable homicide is punishable with death where the act is done with the intention of causing death, or of causing such bodily injury as is likely to result in death.¹³² This offence is equivalent of murder under the criminal code. Once the prosecution establishes the required intent and causation, the sentence of death may be imposed.

A notable feature of the Penal Code is its distinction between culpable homicide punishable with death and culpable homicide not punishable with death.¹³³ Sections 222-224 outline circumstances that reduce liability, such as provocation or sudden fight, in which case the punishment is reduced to imprisonment rather than death.¹³⁴ This demonstrates a more flexible approach compared to the Criminal Code, as it allows consideration of mitigating factors. Besides culpable homicide, the law provides for capital punishment in case of offences against the state. Examples include: treason, especially when this act involves levying war against the state;¹³⁵ and assisting the enemy during times of war, thus threatening national security.¹³⁶ These laws show how seriously such offences, that threaten the existence of the state, are taken by the law. Whereas most laws stipulate that the death sentence is obligatory in certain cases, the penal code leaves room for judicial discretion when deciding on what type of an offence to punish with a capital sentence. The courts have interpreted the provisions of the penal code in line with general principles of criminal law, requiring proof beyond reasonable doubt. The death penalty under the penal code derives its validity from section 33(1), which permits

¹³² Penal Code Act, Cap P3 Laws of the Federation of Nigeria (LFN) 2004, S 221.

¹³³ Ibid, ss 222-224.

¹³⁴ Ibid.

¹³⁵ Penal Code Act, Cap P3 Laws of the Federation of Nigeria (LFN) 2004, S 51.

¹³⁶ Ibid, s 52.

deprivation of life in execution of a court sentence.¹³⁷ Thus, the provisions of the penal code are constitutionally grounded and enforceable. As with other capital offences, several safeguards apply. The prosecution must prove the offence beyond reasonable doubt under the evidence act.¹³⁸ The accused has a right of appeal up to the supreme court.¹³⁹ Additionally, the prerogative of mercy may be exercised to commute death sentences.¹⁴⁰ The Penal Code adopts a more nuanced approach to capital punishment compared to the criminal code, particularly through its recognition of mitigating circumstances. On the other hand, the existence of the death penalty continues to spark controversies in view of the changing standards of human rights, and the general tendency towards abolishing it worldwide.

3.4. Robbery and Firearms Act 1984

The robbery and Firearms (Special Provisions) Act occupies a central position in Nigeria's criminal justice system in relation to violent offences, particularly armed robbery. Enacted to curb the alarming rise in robbery incidents, the Act prescribes severe penalties, including the death sentence. The principal provision on the death penalty under the Act is section 1(2), which provides that where an offender is armed with any firearm or offensive weapon, or is in the company of a person so armed, or wounds or uses person al violence on any person during a robbery, the offender shall upon conviction be sentenced to death.¹⁴¹ In this case, armed robbery is made a capital crime. It should be noted that this section of the Act is disjunctive in nature because proof of any single element will render the person guilty of armed robbery. Therefore, a perpetrator will face the death penalty even if he did not carry out the robbery himself as long as he committed the crime with an accomplice who was armed. Under the Act, criminal liability is very broad. Section 1(3) makes accomplices and accessories liable

¹³⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33(1).

¹³⁸ Evidence Act 2011, s 135.

¹³⁹ CFRN 1999, s 233.

¹⁴⁰ Ibid, s 175.

¹⁴¹ Robbery and Firearms (Special Provisions) Act, Cap R11 Laws of the Federation of Nigeria (LFN) 2004, s 1(2).

alongside principals.¹⁴² In addition, the definitions of both ‘firearms’ and ‘offensive weapons’ are quite broad as they include those objects which can inflict injuries on people. The death penalty under the act derives constitutional validity from section 33(1) of the constitution of the Federal Republic of Nigeria 1999 (as amended), which permits deprivation of life in execution of a court sentence.¹⁴³ Despite the severity of the punishment, certain safeguards exist. The prosecution must prove beyond reasonable doubt in accordance with the evidence act.¹⁴⁴ The accused is entitled to a legal representation and has a right of appeal up to the supreme court.¹⁴⁵ Additionally, the prerogative of the mercy under section 175 of the constitution allows for the commutation of death sentences.¹⁴⁶ However, the Act itself does not provide for alternative sentencing once guilt is established. Though the Robbery and Firearms Act provides for the imposition of death penalties, it has also been criticized due to its stipulations. The rigidity of the punishment together with the wider scope of liability may result in unfair sentencing where the accused plays a minimal part in the crime. However, it should be noted that the Act is an important means used by the government in order to fight violent crime. The provisions of the Act have been upheld by the courts and are provided for in the constitution.

3.5. Armed Forces Act 1994

This is the Nigerian Law that provides for the discipline and administration of the Nigerian Armed Forces. It creates an elaborate scheme of military justice and prescribes penalties for services offences, which may also include the death penalty in some cases. In particular, the Armed Force Act envisions death penalty for offences that relate to the military and have been perpetrated during the times of war or where national security is at stake. For example, section 45 of this Act states that any member of the Armed Forces found guilty of offences such as

¹⁴² Ibid, s 1(3).

¹⁴³ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 33(1).

¹⁴⁴ Evidence Act 2011 s 135.

¹⁴⁵ CFRN 1999, s 233.

¹⁴⁶ Ibid s 175.

aiding the enemy, cowardice before the enemy, or inability to suppress mutiny may be liable to death.¹⁴⁷ On the other hand, section 46 deals with mutiny offences and stipulates that a person who takes part in the mutiny or fails to suppress it may receive the death penalty after conviction.¹⁴⁸ These provisions reflect the need for strict discipline within the armed forces, especially in situations where misconduct could endanger national security or military operations. In addition to purely military offences, the Act incorporates certain civil offences into military law.

Section 114 provides that a person subject to service law who commits a civil offence such as murder, may be tried by a court martial and punished in accordance with the relevant law which may include the death penalty.¹⁴⁹ This means that capital offences recognised under the general criminal law, such as murder, may attract the death penalty when committed by military personnel. Unlike some civilian statutes, the armed forces act does not always impose a strictly mandatory death sentence. In many instances, the punishment is expressed as “liable to suffer death,” thereby granting discretion to the court martial to impose an alternative sentence where appropriate. This indicates that there is a certain amount of flexibility in the military justice system, allowing for considerations of the particularities of each case. It is important to note that a sentence of death, pronounced by a court martial, must also be approved by the confirming authority before its execution.¹⁵⁰ This acts as another layer of review in the military justice system. Additionally, the power of mercy under the constitution could be invoked to commute a death sentence.¹⁵¹ The death penalty, therefore, exists within the larger constitutional scheme. The death penalty under the Armed Forces Act can also be justified based on issues of military necessity and discipline. Offences like mutiny and aiding the enemy are extremely dangerous to national security and hence call for the application of severe measures. However, the fairness of a military trial has been questioned due to its inconsistency

¹⁴⁷ Armed Forces Act, Cap A20 Laws of the Federation of Nigeria (LFN) 2004, s 45.

¹⁴⁸ Ibid, s 46.

¹⁴⁹ Ibid, s 114.

¹⁵⁰ Armed Forces Act, Cap A20 Laws of the Federation of Nigeria (LFN) 2004, s 148.

¹⁵¹ Ibid.

with the fair hearing principle in capital cases. In addition, there has been debate on whether the death penalty can still be applied within a modern military justice system.

3.6. Child Rights Act 2003

This Act represent a landmark statute in Nigeria aimed at protecting the rights and welfare of children. It domestically incorporates key principles from international instruments such as the Convention on the Rights of the Child. One of its most significant contributions to the criminal justice is its clear prohibition of the death penalty in respect of child offenders. The Child Rights Act expressly prohibits the imposition of the death penalty on any person who was a child as at the time of committing an offence. Section 221 provides that: No child shall be sentenced to death for an offence committed.¹⁵²

This provision establishes an absolute ban, irrespective of the nature or gravity of the offence, including offences that would ordinarily attract capital punishment under other laws such as murder or armed robbery. The Act defines a child as any person under the age of eighteen years.¹⁵³ Consequently, the restriction is applied to all individuals under eighteen at the time of commission of the offense regardless of whether they are tried after obtaining adulthood. It conforms to international human rights norms that do not allow punishing minor offenders through death penalties. The Act makes provisions for other measures that can be adopted in place of the death penalty, including but not limited to custodial orders, probation, rehabilitation programmes, and others.¹⁵⁴ The core of the issue remains the best interest of the child, which is a guiding principle in the Act. It must be emphasized that the ban on the use of capital punishment under the Act trumps the relevant provisions in other legislations. In that case, even when statutes such as the Criminal Code and Robbery and Firearms Act make death punishment mandatory in certain cases, this provision will not apply to children. This is due to the protective spirit of the statute. The Child Rights Act recognizes the obligations of Nigeria

¹⁵² Child Rights Act (2003), s 221.

¹⁵³ Ibid, s 277.

¹⁵⁴ Ibid.

under international law concerning the protection of children against the use of death punishment. Under both the Convention on the Rights of the Child and African Charter on the Rights and Welfare of the Child.¹⁵⁵ Prohibition of imposition of capital punishment for children has been seen as a major step in the progressive development of laws within Nigeria. It recognizes the lesser culpability of children and promotes rehabilitation rather than punishment. But, effectiveness of the Act is dependent on its domestication in each of the different states since not all states have adopted all the provisions contained therein. This poses problems in ensuring equal protection for all.

3.7. Terrorism Prevention Act 2013

This Act clearly states that capital punishment shall apply in situations wherein the acts of terrorism were responsible for the death of an individual. In Section 1(2), it is stated that any person who knowingly commits or is associated with acts of terrorism causing death shall upon conviction be liable to suffer capital punishment.¹⁵⁶ This shows the legislature's desire to consider terror acts causing deaths as among the most heinous crimes, which therefore deserve the ultimate form of punishment in accordance with Nigerian law. The Act takes a liberal stance regarding those who are subject to punishment. Punishment under the Act is not limited only to the principal perpetrator but also extends to all persons involved in the perpetration of acts of terrorism, aiding, abetting, or conspiring to commit terror acts. Therefore, all those associated with acts of terrorism will face capital punishment when the act leads to death. This provision reflects the legislature's intention to treat terrorism resulting in fatalities as one of the gravest offences, warranting the highest form of punishment under Nigerian law. The Act adopts a broad approach to liability. It does not restrict punishment to the principal offender alone but extends it to individuals who participate in the commission of terrorist acts; facilitate, aid, or abet such acts; or conspire with others to carryout acts of terrorism. Thus, where death

¹⁵⁵ Convention on the Rights of the Child 1989, article 37(a); African Charter on the Rights and Welfare of the Child 1990, article 5(3).

¹⁵⁶ Terrorism (Prevention) Act 2011 (as amended by the Terrorism (Prevention)(Amendment)Act 2013 s 1(2).

results from the terrorist activity, all parties involved maybe exposed to capital punishment, depending on their level of participation and the evidence before the court. While the Act stipulates the death penalty, it should be appreciated that the use of the term permits some level of judicial discretion dependent on the facts of each case. Nonetheless, where there is a direct link between the death and the commission of the terrorism act, the death penalty becomes mandatory when there is a conviction. This is in consonance with Nigeria's general criminal law where offences resulting in death attract the death penalty. It is constitutional under section 33(1) of the Nigerian Constitution to deprive someone of life while executing the sentence of the Court arising from a conviction.¹⁵⁷ Thus, the provisions of the Act do not conflict with the constitutional provision regarding the right to life. In line with other offences that can attract the death penalty, the prosecution has to prove the constituents of the offence beyond reasonable doubt.¹⁵⁸ A defendant has the right to due process, and an opportunity to appeal before the supreme court.¹⁵⁹ In addition, the prerogative of mercy provided for in section 175 of the Nigerian Constitution makes it possible to commute a death penalty.¹⁶⁰ The provision of the death penalty in the Terrorism Prevention Act underscores the government's position against terrorism.

3.8. Administration of Criminal Justice Act (ACJA) 2015

The Administration of Criminal Justice Act (ACJA) was enacted to reform criminal procedure in Nigeria, promote efficient justice delivery, and protect the right of the defendants. Unlike substantive criminal laws such as the criminal code or penal code, the ACJA does not create offences or prescribe punishments, including the death penalty. Rather, it regulates the procedure for the trial and execution of sentences, including capital punishment. This ACJA is primarily procedural in nature. It governs arrest, investigation, trial, sentencing and post-conviction processes. It does not itself prescribe the death penalty; instead, it applies where

¹⁵⁷ CFRN 1999.

¹⁵⁸ Evidence Act 2011, s 135.

¹⁵⁹ CFRN 1999, s 233.

¹⁶⁰ CFRN 1999, s 175.

such a sentence has been imposed under other substantive laws.¹⁶¹ Thus, the role of the ACJA in relation to capital punishment is to ensure that the process leading to conviction and execution complies with principles of fairness and due process. Where a person is convicted of a capital offence under any applicable law, the ACJA recognises the authority of the court to impose the sentence prescribed that law. However, the Act ensures that sentencing follows due process and that the rights of the accused are protected throughout the trial.¹⁶² The Act also reinforces the requirement that the guilt of the accused must be proved beyond reasonable doubt before any conviction, particularly in capital cases. A significant safeguard under the ACJA is that a sentence of death shall not be carried out while an appeal is pending. This ensures that the condemned person has the full opportunity to exhaust all appellate remedies but it also states that an application for stay of proceedings in respect of a criminal matter before the court shall not be entertained.¹⁶³ This provision reflects the irreversible nature of the death penalty and the need for caution in its execution.

Provision is made in the ACJA that full and accurate records of all proceedings in capital cases must be preserved and delivered to the appellate courts.¹⁶⁴ This will facilitate effective review of cases and prevent any miscarriage of justice. Guidance is offered regarding executions as the execution must be conducted in accordance with the law after complying with all legal requirements.¹⁶⁵ However, an execution also involves the issuing of a death warrant. The ACJA contains several innovations meant to ensure that the rights of accused persons in criminal prosecutions are adequately protected. Among others, such innovations include the rights to counsel, trial without unnecessary delays and protection from unlawful detention. It should be noted that ACJA neither extends the application of the death penalty nor seeks to abolish it; rather, the aim is to regulate the execution of this punishment. Its emphasis on due process, speedy trials, and protection of trials, and protection of rights represents a significant

¹⁶¹ Administration of Criminal Justice Act 2015.

¹⁶² Administration of Criminal Justice Act 2015.

¹⁶³ Ibid, s 306.

¹⁶⁴ Administration of Criminal Justice Act 2015.

¹⁶⁵ Ibid.

improvement in Nigeria's criminal justice system. However, concerns remain regarding delays in the appellate process and the broader debate over the continued use of capital punishment in Nigeria.

3.9. Kidnapping laws of various states

Kidnapping has become a major security threat in Nigeria, leading to legal measures at the state level aimed at dealing with it. In contrast to criminal acts like murder and armed robbery, there is no one common national law against kidnapping but many states have passed their own. These laws often prescribe severe penalties, including the death penalty, particularly where the offence results in loss of life. Kidnapping is primarily regulated through state legislation, as criminal law is partly within the legislative competence of states. Consequently, different states have enacted different laws tailored to their security challenges.

Many state kidnapping laws prescribe the death penalty where the act of kidnapping leads to the death of the victim. For example, under the Edo State law, a person convicted of kidnapping where the victim dies may be sentenced to death.¹⁶⁶ Similarly, some states provide that where a kidnapped victim is killed, the offender shall be liable to capital punishment.¹⁶⁷ This shows that it was the legislative intent to equate kidnapping involving murder with murder. Where murder does not occur during kidnapping, there exist laws that provide for very severe punishments such as life imprisonment or prolonged periods of imprisonment.¹⁶⁸ Sometimes other forms of punishments such as forfeiture of property may apply. In some statutes, the death penalty is mandatory or nearly mandatory where murder occurs due to kidnapping. However, the language used differs in most of these statutes with some giving leeway to judicial discretion. The wide ambit in liability may cover not only the principal but also his accomplice, co-conspirator, and those aiding him commit the crime. The legality of the death penalty under state laws dealing with kidnapping comes about through Section 33(1) of the

¹⁶⁶ Edo State Kidnapping Prohibition Law 2013.

¹⁶⁷ See as example Lagos State Kidnapping Prohibition Law 2017.

¹⁶⁸ Ibid.

Constitution of the Federal Republic of Nigeria 1999 (amended) that allows the deprivation of life in execution of a court order.¹⁶⁹ Therefore, any state law providing for the death penalty falls within the constitutional provision. Like all other capital offences, some protections are provided. Proof beyond reasonable doubt is required on the part of the prosecution,¹⁷⁰ while the defendant has the right of appeal even to the Supreme Court.¹⁷¹ Moreover, the right of mercy can be used to convert death sentences.¹⁷² The imposition of the death penalty for kidnapping offences shows that the crime is serious enough to warrant such punishment and also the intention to discourage such offences. Nevertheless, there are doubts over the capability of the death penalty as a means of deterrence considering that kidnapping has been widespread in the country.

Method of Execution of Death Penalty

Death sentence is still legal under the Nigerian law as stipulated under Section 33 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) legality of the execution of death penalty which authorizes the deprivation of life upon execution of the sentence of the court.¹⁷³ Execution of death penalty sentences is done through statutory provisions, subsidiary legislation, practice and procedures. This provision has been consistently upheld by the Supreme Court. In *Kalu v State*,¹⁷⁴ it was held that death sentence, inclusive of execution is legal under our constitution and does not contravene the right to life enshrined therein. However, execution of the death penalty takes various forms which includes;

- i. Hanging: One of the oldest methods of execution of death sentence in Nigeria is Death by Hanging. This method is prescribed under the Criminal Code and is reflected in practice across many southern states. It should be noted that traditionally sentences have been passed in the following manner: ‘to be hanged by

¹⁶⁹ Evidence Act 2011, s 135.

¹⁷⁰ Ibid.

¹⁷¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 233.

¹⁷² Ibid, s 175.

¹⁷³ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33 (1).

¹⁷⁴ (1988) 13 NWLR (Pt 583) 531.

the neck until dead.’¹⁷⁵ The use of this method has received full judicial endorsement in Nigeria. For instance, in the case of *Okoro v State*,¹⁷⁶ the Supreme Court upheld a conviction for murder and sentence to death by hanging.

- ii. Firing Squad: Another recognized means of carrying out an execution is a firing squad method, where armed robbery or offences of military nature are involved. By virtue of the Robbery and Firearms Act, traditional executions by firing squad have been carried out. Likewise, the Armed Forces Act provides for execution by firing squad in relation to offences of military nature. In *Bozin v State*,¹⁷⁷ even though the central issue was that of armed robbery, the death sentence had been awarded, which is normally carried out under the Act.
- iii. Lethal Injection: Lethal injection has been adopted by a few Nigerian States as a mode of execution through subsidiary legislation or other administrative reforms and it is provided for under section 402(1).¹⁷⁸ Although not much has been said in Nigerian appellate courts about lethal injection, this development shows a tendency to modernize execution.

Whichever mode may be adopted, it is impossible for the execution of the sentence of death to take place without the issuing of death warrant signed by the State Governor. This executive intervention is highly important in the process. In *Ajiboye v The State*,¹⁷⁹ the court reiterated that it was essential for all legal requirements to be fulfilled for the execution to take place. Furthermore, the Nigerian courts have ruled on matters of delay in execution and on the conditions under which execution can take place. For instance, in *Peter Nemi v Attorney-General of Lagos State*,¹⁸⁰ the Court of Appeal ruled that delay in execution of sentence may amount to inhuman and degrading punishment but not nullity. The same position was taken by

¹⁷⁵ Criminal Procedure Act, Cap C41, Laws of the Federation of Nigeria 2004, s 367(2): ‘The sentence of the court upon you is that you be hanged by the neck until you be dead and may the Lord have mercy on your soul’.

¹⁷⁶ (1988) 5 NWLR (Pt 94) 255.

¹⁷⁷ (1985) 2 NWLR (Pt 8) 465.

¹⁷⁸ Administration of Criminal Justice Act (ACJA) 2015.

¹⁷⁹ (1995) JELR 43466 (SC).

¹⁸⁰ (1996) 6 NWLR (Pt 452) 42.

the Supreme Court in *Onuoha Kalu v State*.¹⁸¹ There are concerns with regard to the methods of execution. Humaneness: Methods like hanging and firing squad are seen as archaic and inhumane; Delay: Being on long stays on death row result in psychological torture. Inconsistency: Various methods of execution depend on the nature of crime committed. Despite this, the Nigerian judiciary has taken a more conservative stand regarding the issue of the legality, rather than the morality, of the method used. These methods of executing death penalty have some human right implications.

The death penalty continues to be one of the most debated issues within the Nigerian criminal justice system, especially from the point of view of human rights. The Constitutional, but the implementation of this provision gives rise to many serious questions of right to life, dignity of the human being, hearing, and obligations of Nigeria to comply with the international standards of human rights. The primary question of human rights protection here is related to the right to life established by section 33 (1). Despite the possibility for the loss of life when implementing a judicial sentence, such provision gives rise to conflicts between constitutional legality and moral legitimacy of the right to life.¹⁸² The Supreme Court, in the case of *Kalu v State*,¹⁸³ ruled that the death penalty did not violate the constitutional right to life, since death penalty was an exception stated in section 33 (1). Thus, the Supreme Court took a strict constitutional approach and considered only legality issues rather than human rights protection issues. Nevertheless, there is criticism stating that the exception made by the court is undermining universal and inalienable nature of the right to life due to global trends of abolitionism. Section 34(1) of the constitution provides for the dignity of the human being and prohibits torture, inhumane and degrading treatment.

In *Peter Nemi v Attorney-General of Lagos State*,¹⁸⁴ it was stated by the Court of Appeal that prolonged delay in executing a death sentence can be tantamount to inhuman and degrading

¹⁸¹ (1998) 13 NWLR (Pt 583) 531.

¹⁸² Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33 (1).

¹⁸³ (1998) 13 NWLR (Pt 583) 531.

¹⁸⁴ (1996) 6 NWLR (Pt 452) 42.

treatment. It was observed that there may exist some psychological distress involved when one is kept awaiting execution for an extended period, also known as “the death row phenomenon.” However, Nigerian courts have not gone ahead to rule the death penalty as unconstitutional based on such concerns. Given the finality of the death sentence, the right to fair hearing provided for in section 36 of the Constitution becomes even more important. A wrongful conviction in the case of death penalty leads to irreparable consequences. The court in *Aoko v Fagbemi*¹⁸⁵ reaffirmed the principle of legality whereby no one should be found guilty of a criminal act unless the same is specified and a penalty imposed as per law. This is of utmost importance in capital cases.

Likewise, in *Bozin v State*,¹⁸⁶ the prosecution must prove each element of the crime beyond any reasonable doubt in order for a conviction that warrants capital punishment to stand. Nonetheless, concerns still remain about wrongful convictions resulting from ineffective investigations, inadequate legal defence and inefficiencies in the process. The other human rights violation relates to the mandatory application of the death penalty in relation to certain crimes such as murder and armed robbery. Mandatory sentencing lacks flexibility, thereby not allowing for mitigating circumstances. According to *Okoro v State*,¹⁸⁷ it is settled law that where murder is established, there is no option but to impose the death penalty. Though procedurally accurate, it does not comply with the human rights era, where individualized sentencing is favoured. Most condemned prisoners spend a great number of years languishing in death row waiting for execution. In *Peter Nemi v Attorney-General of Lagos State*,¹⁸⁸ the court held that such a delay may amount to degrading treatment. However, Nigerian courts have not adopted the position that such delay renders the execution unlawful. Nigeria is a party to several international instruments, including the African Charter on Human and Peoples’ Rights (domesticated in Nigeria) and the International Covenant on Civil and Political

¹⁸⁵ (1961) 1 All NLR 400.

¹⁸⁶ (1985) 2 NWLR (Pt 8) 465.

¹⁸⁷ (1988) 5 NWLR (Pt 94) 255.

¹⁸⁸ (1996) 6 NWLR (Pt 452) 42.

Rights.¹⁸⁹ These instruments emphasize the protection of life and restrict the use of the death penalty to the “most serious crimes.” When Nigerian courts recognize these obligations, they have generally subordinated them to express constitutional provisions. Nigerian law recognizes certain limitations on the application of the death penalty, particularly for vulnerable groups. For example, children are exempt from capital punishment under the Child Rights Act.

This reflects a growing human rights consciousness, although such protections are not uniformity applied across all jurisdictions. Perhaps the most serious human rights implication is the possibility of executing an innocent person. In light of the above-mentioned systematic problems with the criminal justice system of Nigeria, this is an issue that must not be overlooked. The finality of the punishment under discussion means that any mistake made in judging is a catastrophe, which, in turn, provides another reason to abolish capital punishment or impose a moratorium on it. The issue of death penalty in Nigeria poses serious human right issues, especially in the aspects of the right to life, human dignity, and the right to a fair trial. Despite the fact that the Supreme Court of Nigeria found it to be constitutional, judicial precedents such as *Kalu v State*¹⁹⁰ and *Peter Nemi v Attorney-General of Lagos State*¹⁹¹ illustrate problems with capital punishment. Furthermore, the mandatory character of death penalty, as well as possible mistakes in sentencing, make it even more problematic from the perspective of law.

Despite these human right implications, the development of capital punishment in Nigeria has largely been influenced by judicial interpretations, especially by the appellate courts. Judicial decisions have often addressed issues of constitutionality, mandate, evidence, and the relationship between capital punishment and human rights. The basis for the discussion of this aspect is the constitutional right under section 33 (1),¹⁹² which stipulates that everyone has the

¹⁸⁹ African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004; International Covenant on Civil and Political Rights 1966 article 6.

¹⁹⁰ *Kalu v State* (n 75).

¹⁹¹ *Peter Nemi* (n 188).

¹⁹² Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33 (1).

right to life except in execution of a court's sentence. In *Kalu v State*,¹⁹³ it was ruled that capital punishment was constitutional and not cruel or degrading punishment. In this case, the constitution was interpreted literally, stating that the right to life is not absolute. This is a leading case with regard to the constitutionality of capital punishment in Nigeria. In *Okoro v State*,¹⁹⁴ the Supreme Court ruled that once the offence of murder is proved beyond reasonable doubt, the trial court has no discretion but to impose the death sentence. Similarly, in *Olayinka v State*,¹⁹⁵ the court reaffirmed that the death penalty under the Robbery and Firearms Act is mandatory once the ingredients of the offence are established. The strict approach has been criticized for excluding consideration of mitigating circumstances.

Given the irreversible nature of capital punishment, Nigerian courts insist on strict proof beyond reasonable doubt. In *Bozin v State*,¹⁹⁶ the supreme court laid down the essential ingredients of armed robbery and emphasized that all must be proved before conviction. In *Woolmington v DPP*,¹⁹⁷ although an English case, the principle that the prosecution bears the burden of proof has been adopted in Nigerian jurisprudence and strictly applied in capital cases. The courts apply strict interpretation in capital cases to avoid wrongful convictions. In *Aoko v Fagbemi*,¹⁹⁸ the court held that no person can be convicted of an offence unless it is defined and the penalty prescribed by written law. This principle ensures that any ambiguity is resolved in favour of the accused. Confessions often play a critical role in capital cases, but the courts approach them with caution. The Court in *R v Sykes*¹⁹⁹ gave guidelines for testing the reliability of confessions and the Nigerian Courts have adopted similar principles. In *Ogudo v State*,²⁰⁰ the Supreme Court upheld the principle that a voluntary and credible confession alone can ground a conviction even in capital matters. The courts have accepted that the long delay in

¹⁹³ *Kalu v State* (n 75)

¹⁹⁴ (2007) 9 NWLR (Pt 1040) 561.

¹⁹⁵ (2007) 9 NWLR (Pt 1040) 561.

¹⁹⁶ *Bozin v State* (n 186)

¹⁹⁷ (1935) AC 462

¹⁹⁸ *Aoko v Fagbemi* (n 185)

¹⁹⁹ (1913) 8 CAR (233) 236.

²⁰⁰ (2011) 18 NWLR (Pt 1278) 1.

executing death sentences is a matter of human rights. In *Peter Nemi, Attorney-General of Lagos State*,²⁰¹ the court of appeal held that excessive delay may amount to inhuman and degrading treatment. However, the courts have not accepted that such delays invalidate the death sentence itself. Appellate courts exercise great caution in capital cases. In *Adamu v State*,²⁰² the Supreme Court highlighted the need to carefully review evidence before upholding a death sentence. Similarly, in *Alabi v State*,²⁰³ the court emphasized that any doubt must be resolved in favour of the accused. Overall, Nigerian courts follow a conservative and strict approach. They focus on the legality of capital punishment rather than its morality. Even when human rights arguments come up, courts often defer to the constitution and the legislature. They argue that abolishing the death penalty is a legislative, not a judicial, matter. Judicial interpretation of capital punishment in Nigeria shows a commitment to constitutional authority and the enforcement of laws. The courts have upheld its legality, enforced its mandatory nature, and insisted on strict evidence standards. At the same time, they have put safeguards in place to reduce injustice, particularly through appellate review and strict proof requirements. However, the judiciary's hesitation to confront the death penalty on human rights grounds suggests that any major reform will rely on legislative change rather than judicial action.

²⁰¹ Peter Nemi (n 188).

²⁰² (1991) 4 NWLR (Pt 187) 530.

²⁰³ (1993) 7 NWLR (Pt 307) 511.

CHAPTER FOUR

COMPARATIVE CONSTITUTIONAL ANALYSIS

4.1 Death Penalty in Selected African Countries

There is an enormous disparity in the handling of the death penalty among African nations. Where some have fully abolished the death penalty, others still uphold it through their constitution or practices. The review of a number of African nations gives us much insight into how the death penalty is handled constitutionally and lessons for Nigeria.

i. South Africa

The South African constitution stands out as one of the most influential models when it comes to abolishing the death penalty in Africa. The transformation of South Africa from a retentionist state in the time of apartheid to a constitutional democracy based on the principles of human rights, dignity, and equality is very instructive for other countries in Africa especially Nigeria.²⁰⁴ In its history, the death penalty was a major part of the criminal justice system in South Africa; in the colonial era and the time of apartheid, the death penalty was applied for various crimes such as murder, treason, rape, robbery aggravated and certain political crimes and the government under apartheid regime regularly used the death penalty as a tool of state control, especially against political opponents and anti-apartheid campaigners.²⁰⁵ This led to South Africa becoming one of the countries with the highest execution rate in the world during the 1970s and 1980s.²⁰⁶ Based on the records of the government, several hundred prisoners were put to death every year during the heydays of apartheid and the apartheid judicial system was accused by human rights groups of being racially discriminatory since more blacks in

²⁰⁴ *S v Makwanyane and Another* 1995 (3) SA 391 (CC); William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, CUP 2002) 329–334.

²⁰⁵ *S v Makwanyane and Another* 1995 (3) SA 391 (CC); William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, CUP 2002) 330–333; David McQuoid-Mason, 'The Death Penalty in South Africa' (1997) 15(1) *Netherlands Quarterly of Human Rights* 31, 32–35.

²⁰⁶ David Welsh, *The Rise and Fall of Apartheid* (Jonathan Ball Publishers 2009) 246–249.

South Africa than whites received death penalties.²⁰⁷ The abolition of apartheid and the creation of constitutional democracy brought about fundamental changes in the legal environment. The appearance of the Interim Constitution of 1993 raised the problem of inconsistency between capital punishment and the constitutional protection of human rights.²⁰⁸ This problem was considered by the Constitutional Court in the famous case of *S v Makwanyane and Another*²⁰⁹. In a unanimous judgment, the court decided that death penalty is contrary to the right to life, right to dignity and right to protection from cruel treatment.²¹⁰ Justice Arthur Chaskalson pointed out that the right to life is the most basic of all the human rights, since without this right, no other right can exist.²¹¹

The Court also stated that the killing of a person by the state as an act of execution was completely incompatible with the principles of a democracy, which respects human dignity and equality. Nonetheless, the Constitutional Court concluded that there was no empirical evidence of a better deterrent effect of the death penalty over lengthy incarceration.²¹² Constitutional rights could not be trumped by mere numbers because the public favored execution. Constitutional Democracy mandates that courts protect essential rights even when these rights are unpopular.²¹³ The ruling in *Makwanyane* amounted to the abolition of the death penalty in South Africa. In the aftermath of the ruling, no court in South Africa could ever impose a death sentence. Further, the 1996 Constitution also confirmed the abolition of the death penalty through various clauses. Under Section 11, "Everyone has the right to life."²¹⁴ Section 10 states that "everyone has inherent dignity and the right to have his dignity respected and protected."²¹⁵ In addition, section 12 makes it illegal to subject any person to torture, cruel,

²⁰⁷ Amnesty International, *When the State Kills: The Death Penalty and Human Rights* (Amnesty International Publications 1989) 37.

²⁰⁸ *S v Makwanyane and Another* 1995 (3) SA 391 (CC) paras 1–9; Constitution of the Republic of South Africa Act 200 of 1993, ss 9–11.

²⁰⁹ *S v Makwanyane and Another* 1995 (3) SA 391 (CC).

²¹⁰ *Ibid*, para 146.

²¹¹ *Ibid*, para 144.

²¹² *Ibid*, para 116–129.

²¹³ *Ibid*, para 88.

²¹⁴ Constitution of the Republic of South Africa 1996, s 11.

²¹⁵ *Ibid*, s 10.

inhuman, or degrading punishment.²¹⁶ Combined, these two provisions constitute a constitutional foundation for a very tough task of reinstatement of the death penalty, as far as considerable changes to the constitution will be required. Moreover, the South African position regarding the death penalty has been reinforced by international obligations under human rights treaties, such as the African Charter on Human and Peoples' Rights and ICCPR.²¹⁷ In post-abolition South Africa, life imprisonment is the alternative to capital punishment for the worst offences, life imprisonment may be handed down for aggravated murder and terrorism offences, among others.²¹⁸ The South African approach can be considered highly useful for Nigeria from the following aspects. Firstly, it indicates that the protection of human rights is guaranteed in a case of constitutional supremacy. Secondly, it confirms the capacity of courts to protect human dignity from majority rule. Thirdly, it proves that capital punishment abolition and efficient criminal justice administration through other forms of penalties can coincide. That is why the South African experience is one of the most compelling arguments in favor of death penalty abolition in Africa.

ii. Ghana

Ghana is distinct in the present-day African debate on the issue of capital punishment in that it is one of the few countries that has undergone transformation from being a constitutionally retentionist state to a statutorily abolitionist country.²¹⁹ This is one of the most significant lessons to be learned by Nigeria, which still acknowledges the existence of the death penalty under its laws. The use of the death penalty was first established in Ghanaian criminal laws during the time of British colonialism and it was viewed as an important way of ensuring law and order and was imposed on offenses such as murder, treason, piracy, and military

²¹⁶ Ibid, s 12.

²¹⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.

²¹⁸ Criminal Law Amendment Act 105 of 1997 (South Africa).

²¹⁹ Constitution of the Republic of Ghana 1992, art 13; Criminal Offences (Amendment) Act 2023 (Ghana), Act 1114; Amnesty International, *Death Sentences and Executions 2023* (2024) 58–61.

offenses.²²⁰ After gaining its independence in 1957, the country kept most of the colonial criminal laws that provided for capital punishment.²²¹ Post-independence governments upheld the practice of imposing capital punishment as a legal form of punishment in the case of grave offenses.²²² Murder was punishable with death according to the Criminal Offences Act 1960 (Act 29), whereas certain military offenses attracted the death penalty under the Armed Forces Act.²²³ As a result, courts had powers to pass the death sentence on offenders.

The constitutional justification for capital punishment was established in the Constitution of the Republic of Ghana 1992. It is evident that the right to life is enshrined in article 13(1),²²⁴ yet there is an exemption when the deprivation of life emanates from the enforcement of a sentence pronounced by a court on an individual who has committed a criminal offense according to Ghanaian laws. The aforementioned provision serves to legalize capital punishment in the context of the constitution. While the pronouncement of death sentences by courts persisted after the adoption of the Constitution in 1992, subsequent Ghanaian presidents used their prerogative of mercy and changed death sentences into imprisonments.²²⁵ There were increasing challenges on the part of human rights activists and lawyers on the issue of retaining the death penalty, this is because the critics felt that the death penalty undermined the dignity of man and the risks of the injustice involved were intolerable.²²⁶ Further, they said there was no scientific proof to show that the death penalty served as an effective deterrent to crime compared to imprisonment.²²⁷ The drive for abolition was also propelled by reforms in the constitution. After consulting widely, it was found that the death penalty should be

²²⁰ Raymond Atuguba, 'Constitutionalism and Human Rights in Ghana' (2013) 57 *Journal of African Law* 89, 93

²²¹ Kwame Karikari, 'The Evolution of Criminal Justice in Ghana' (2011) 6 *African Human Rights Law Journal* 117, 122.

²²² William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, Cambridge University Press 2002) 61.

²²³ Criminal Offences Act 1960 (Act 29) (Ghana); Armed Forces Act 1962 (Act 105) (Ghana).

²²⁴ Constitution of the Republic of Ghana 1992, art 13(1).

²²⁵ Amnesty International, *Death Sentences and Executions 2022* (Amnesty International Publications 2023) 42.

²²⁶ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, OUP 2015) 391.

²²⁷ *Ibid*, 394.

abolished and substituted with life imprisonment.²²⁸ The Commission found that capital punishment was no longer in line with evolving human rights standards and noted that Ghana's tradition of not carrying out any executions was an indication of decreasing societal support for capital punishment.²²⁹

There were also obligations under international law that affected the reform process. Ghana is a state party to the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.²³⁰ Under the Criminal Offences (Amendment) Act 2023, the death penalty for murder and other crimes was abolished and replaced with life imprisonment.²³¹ In addition, the Parliament amended military laws and excluded death penalties for military law violations.²³² These changes received positive reactions from both domestic and foreign human rights organizations. It was claimed that abolishing the death penalty would increase Ghana's adherence to the principles of constitutionalism, democracy, and respect for human rights.²³³ The Ghanaian experience is a good example of how gradual abolition can be achieved through legislative reforms, judicial caution, and changing views of the general public. In contrast to South Africa, where the abolishing of capital punishment was mainly achieved through the process of constitutional adjudication, the Ghanaian experience is an example of legislative steps taken by the government. There are several lessons that Nigeria may learn from the Ghanaian experience. Firstly, that incremental measures can be applied in the absence of constitutional reform. Secondly, that legislative change and active public participation are significant elements. Thirdly, it proves that a state can efficiently administer criminal justice through life imprisonment, without executions.

²²⁸ Constitutional Review Commission of Ghana, *Report of the Constitutional Review Commission: From a Political to a Developmental Constitution* (Government of Ghana 2011) 163.

²²⁹ Ibid.

²³⁰ African Charter on Human and Peoples' Rights 1981; International Covenant on Civil and Political Rights 1966.

²³¹ Criminal Offences (Amendment) Act 2023 (Ghana).

²³² Armed Forces (Amendment) Act 2023 (Ghana).

²³³ Amnesty International, 'Ghana: Landmark Vote to Remove Death Penalty from Laws is a Major Step Forward' (25 July 2023) <<https://www.amnesty.org/en/latest/news/2023/07/ghana-landmark-vote-to-remove-death-penalty-from-laws-is-a-major-step-forward/>> accessed 24 June 2026.

iii. KENYA

Capital punishment was brought to Kenya via British colonial criminal laws. Colonial law-makers imposed capital punishment for offences such as murder, treason and violent robbery.²³⁴ After the country's independence in 1963, Kenya has kept this provision in its criminal laws.²³⁵ Under the Kenyan Constitution of 2010, the right to life is enshrined in Article 26. However, the Constitution does not explicitly outlaw capital punishment and allows for deprivation of life if done so by law.²³⁶ Thus, capital punishment can be considered constitutionally permissible. Capital punishment is specified in the Penal Code for offenses like murder, treason, and robbery with violence.²³⁷ Human rights organizations claimed that it was unconstitutional as it denied people their dignity and equality by denying judges discretion to take into account various mitigating circumstances.²³⁸

The case was finally brought before the Supreme Court of Kenya in the case of *Francis Karioko Muruatetu & Another v Republic*.²³⁹ The applicants were found guilty of murder and were sentenced to death under the provisions of mandatory sentencing. The two applicants sought to declare the mandatory death penalty unconstitutional. The Supreme Court ruled that mandatory death penalty is unconstitutional since it does not allow courts the discretion in passing a sentence and takes away the opportunity to consider personal circumstances of offenders.²⁴⁰ Notably, the Court did not do away with the death sentence; rather, the Court made the mandatory aspect of the death sentence unconstitutional.²⁴¹ In this regard, the judge was empowered to pass the death sentence if it was necessary while having discretion to pass a less severe sentence. Many changes have occurred in Kenya's criminal justice system due to

²³⁴ Stacey Hynd, 'Murder and Mercy: Capital Punishment in Colonial Kenya, ca. 1909–1956' (2012) 45(1) *International Journal of African Historical Studies* 81, 82–85.

²³⁵ Yash Ghai and Jill Cottrell Ghai, *Kenya's Constitution: An Instrument for Change* (Katiba Institute 2011) 119.

²³⁶ Constitution of Kenya 2010, art 26.

²³⁷ Penal Code (Cap 63) (Kenya).

²³⁸ Ben Sihanya, *Constitutional Democracy and Human Rights in Kenya* (LawAfrica 2013) 201.

²³⁹ *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR (Supreme Court of Kenya).

²⁴⁰ *Ibid*, para 69.

²⁴¹ *Ibid*, para 111.

the *Muruatetu* case. Courts started holding individual sentencing hearings, taking into account such aspects as age, remorse, rehabilitation potential, and circumstances of the crime committed.²⁴² Kenya is also subject to various international human rights instruments, like the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.²⁴³ International human rights standards are frequently used by Kenyan courts in the interpretation of constitutional rights. Indeed, Kenya does not carry out any executions in practice and is regarded as a de facto abolitionist country.²⁴⁴ Although death penalties still exist under certain conditions, these sentences are often reduced through presidential discretion.²⁴⁵ Kenya shows an example of how constitutional adjudication can play a great role in changing the way capital punishment works without having to do away with it. The judgment of *Muruatetu* has turned out to be a very important precedent in Africa on the issue of sentencing discretion and human dignity. From the Nigerian point of view, Kenya provides a good model to consider. This case shows how it is possible to reconcile criminal justice goals with the principles of human rights without imposing mandatory death sentences.

iv. UGANDA

It should be mentioned that historically capital punishment has been introduced to Uganda as a result of British colonialism. In particular, capital punishment was viewed by the colonial government as the major means of controlling public order.²⁴⁶ In 1962, after gaining its independence, Uganda continued using the death penalty in cases of murder, aggravated robbery, treason, terrorism and some military cases.²⁴⁷ Article 22(1)²⁴⁸ of the Constitution of the Republic of Uganda 1995 establishes a right to life, but at the same time, states that the life

²⁴² Judiciary of Kenya, *Sentencing Policy Guidelines* (Judiciary of Kenya 2016) 24.

²⁴³ African Charter on Human and Peoples' Rights 1981; International Covenant on Civil and Political Rights 1966.

²⁴⁴ Amnesty International, *Death Sentences and Executions 2023* (Amnesty International Ltd 2024) 58.

²⁴⁵ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, OUP 2015) 436.

²⁴⁶ Stacey Hynd, 'Killing the Condemned: The Practice and Process of Capital Punishment in British Africa, 1900–1950s' (2008) 49(2) *Journal of African History* 403.

²⁴⁷ John Kigula, 'The Death Penalty in Uganda' (2010) 4 *East African Journal of Peace and Human Rights* 52, 55.

²⁴⁸ Constitution of the Republic of Uganda 1995, art 22(1).

of a person may be taken away according to the sentence handed down by a competent court in relation to a criminal act as per Ugandan law. Thus, this constitutional article is instrumental in maintaining the legitimacy of capital punishment. There are several legislative acts which provide for capital punishment. The Penal Code Act provides capital punishment in cases of murder and treason, whereas the Anti-Terrorism Act offers death penalty for certain crimes connected with terrorism.²⁴⁹ The Uganda Peoples' Defence Forces Act provides capital punishment for military offenses as well.²⁵⁰ It was a rule that anyone convicted was given a death penalty irrespective of the circumstances of the crime.²⁵¹ This practice was highly criticized by human rights activists and legal experts who pointed out that mandatory death sentences were in opposition to principles of individualization of justice and did not allow taking into consideration aspects such as the age, psychological state, repentance, and possible rehabilitation of offenders.²⁵²

The constitutionality of mandatory death sentences was examined by the Ugandan Constitutional Court in the case of *Attorney General v Susan Kigula and 417 Others*.²⁵³ It was determined that the mandatory application of the death penalty contravened the constitutional provisions for fair hearing since such mandatory sentence did not allow for discretion during the sentencing stage.²⁵⁴ This ruling was later confirmed by the Supreme Court of Uganda.²⁵⁵ The Supreme Court ruled that while capital punishment was constitutional, mandatory death sentences were unconstitutional as they contravened the principles of fair trial and human dignity.²⁵⁶ Further, the Court also considered the question of prolonged detention in death row. In this connection, the Court ruled that whenever the death row prisoner had been sentenced to death but had spent over three years in death row, his sentence would have to be commuted to

²⁴⁹ Penal Code Act (Cap 120) (Uganda); Anti-Terrorism Act 2002 (Uganda).

²⁵⁰ Uganda Peoples' Defence Forces Act 2005 (Uganda).

²⁵¹ Sarah Joseph, *Constitutional and Administrative Law in Uganda* (Kampala University Press 2012) 187.

²⁵² Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, OUP 2015) 431.

²⁵³ *Attorney General v Susan Kigula and 417 Others* Constitutional Appeal No 3 of 2006 (Supreme Court of Uganda).

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*

²⁵⁶ *Ibid.*

life imprisonment.²⁵⁷ The *Susan Kigula* ruling revolutionized death penalty law in Uganda. After this ruling, while death penalties could still be imposed, these had to take into account aggravating and mitigating factors.²⁵⁸ The imposition of death penalties therefore ceased being mandatory but discretionary. Uganda is a signatory to the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, and the Convention Against Torture.²⁵⁹ While the above-mentioned treaties do not outlaw the death penalty per se, they advocate for strict regulation of its application. Uganda has not executed any offenders in many years, which has made the country de facto abolitionist notwithstanding the retention of the death penalty. While the death penalty continues to be applied in the country occasionally, there have been no executions at all.²⁶⁰ The case in point shows the importance of judicial review in protecting constitutional rights while allowing legislation in matters of criminal justice policies. The case of Uganda holds many lessons for Nigeria in regard to sentencing reform. The Nigerian courts can learn a lot from the rejection of mandatory death sentences and the idea that individualized sentencing is more reflective of the constitutional values of justice and human dignity. The Ugandan case shows that judicial intervention is capable of alleviating the worst effects of capital punishment without abolition.

v. RWANDA

Traditionally, capital punishment was applicable both in customary and statutory laws in Rwanda. In the colonial period, capital punishment was considered a legal method of punishment for severe crimes like murder, treason, and acts that threatened public safety under German and Belgian administrations.²⁶¹ The choice of not executing people convicted of such heinous crimes in the 1994 Genocide against the Tutsi has earned a lot of academic attention.²⁶²

²⁵⁷ Ibid.

²⁵⁸ Lilian Tibatemwa-Ekirikubinza, *Criminal Law in Uganda* (2nd edn, Fountain Publishers 2015) 221.

²⁵⁹ African Charter on Human and Peoples' Rights 1981; International Covenant on Civil and Political Rights 1966; Convention against Torture 1984.

²⁶⁰ Amnesty International, 'Abolitionist and Retentionist Countries as of December 2024' (Amnesty International, 7 April 2025) ACT 50/9240/2025.

²⁶¹ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (CUP 2010) 23–28.

²⁶² William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, CUP 2002) 312–315.

Upon attaining independence in 1962, Rwanda maintained the death penalty as part of its criminal justice process.²⁶³ The use of capital punishment was occasional and not as frequent as witnessed in other African jurisdictions.²⁶⁴ The importance of the use of capital punishment was felt especially after the 1994 Genocide against the Tutsi, approximately 800,000 people were massacred within the period of about a hundred days and this resulted in great pressure to punish those who committed these crimes.²⁶⁵ In reaction, the government introduced laws allowing for the arrest of suspects of genocide. The Organic Law establishing the Organization of Prosecutions for Offenses Constituting the Crime of Genocide classified perpetrators depending on their level of involvement and people who were major instigators of the genocide would be subjected to the death penalty.²⁶⁶ Human rights groups criticized the act of execution as contradictory to the spirit of reconciliation and reconstruction that Rwanda wanted to achieve after the genocide.²⁶⁷

A further issue was that of international criminal justice cooperation. Some genocidaires had escaped and were living in other countries which had abolished the death penalty. They were unwilling to extradite such genocidaires because the latter faced the possibility of execution.²⁶⁸ This problem was especially acute with regard to the International Criminal Tribunal for Rwanda (ICTR), set up by the UN Security Council in 1994. The Tribunal did not provide for any capital punishment. Thus, there were questions concerning inequality of punishments in the Tribunal and domestic criminal courts of Rwanda.²⁶⁹ The scholars pointed out that the convicted people by international tribunals faced only imprisonment, whereas the convicted people domestically faced execution.²⁷⁰ In response to the above issues, Rwanda enacted

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Organic Law No 08/96 of 30 August 1996 on the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity Committed since 1 October 1990.

²⁶⁶ Ibid.

²⁶⁷ Human Rights Watch, *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts* (2011) 27.

²⁶⁸ William A Schabas, *Genocide Trials and Gacaca Courts* (CUP 2005) 118–120.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

extensive legal reforms. In 2007, Organic Law No 31/2007 was passed by Parliament titled “Law Relating to the Abolition of the Death Penalty.” Under the Act, capital punishment is outlawed in all cases under Rwandan law.²⁷¹ Abolition of the death penalty was argued for on various grounds. One, it would ease extradition and international cooperation in the judicial process. Two, it would enhance Rwanda's respect for human rights. Three, it would promote national reconciliation by rejecting state-sanctioned killing.²⁷² The abolishment of capital punishment made the Gacaca courts system run easily as well. The Constitution of the Republic of Rwanda guarantees the sacredness of human life and the protection of human rights and freedoms.²⁷³ Rwanda is also signatory to several international human rights instruments such as the African Charter on Human and Peoples' Rights²⁷⁴ and the International Covenant on Civil and Political Rights.²⁷⁵

The country's criminal justice system has continued to charge the accused of genocide crimes and others without executing anyone.²⁷⁶ This action by Rwanda is especially seen by many as highly significant since it shows that even countries that have just emerged from mass crimes can opt for abolition. Abolition does not in any way make accountability weaker but instead adds to the international credibility of Rwanda as well as improves relations with foreign states and international courts.²⁷⁷ In terms of learning from this experience, Nigeria will learn how abolition can make possible cooperation internationally in matters pertaining to criminal matters. Second, it will show how serious crimes can actually be punished using other means of punishment besides capital punishment; third it will show the significance of legal reforms

²⁷¹ Organic Law No 31/2007 Relating to the Abolition of the Death Penalty (Rwanda).

²⁷² Ibid.

²⁷³ Constitution of the Republic of Rwanda 2003 (revised 2015).

²⁷⁴ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.

²⁷⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

²⁷⁶ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, OUP 2015) 418–423.

²⁷⁷ Ibid.

for reconciliation purposes.²⁷⁸ This clearly shows that abolition can indeed work with justice as well as public safety issues.

4.2. Death Penalty in Selected Abolitionist Jurisdiction

i. United Kingdom

The experiences of the United Kingdom are pertinent to the case of Nigeria in as much as many of the legal institutions of Nigeria derive from the British colonial rule, which includes capital punishment. Hence, it is imperative to consider the historical background of capital punishment in the UK in order to gain better understanding of current discussions of death penalty in Nigeria. In the eighteenth century, the criminal justice system in Britain was infamous for the so-called "Bloody Code".²⁷⁹ According to the "Bloody Code", there were over 200 offenses which entailed death penalty, ranging from petty crimes such as theft, burglary and forgery to murder.²⁸⁰ The main reason behind imposing death penalty on many offenses was that heavy penalties would prevent criminals from engaging in such activities. Executions were generally carried out in public and witnessed by many people and public execution was not just a method of punishing criminals but also a deterrent to those who wanted to commit crime.²⁸¹ During the nineteenth century, there were reforms brought about by rising humanitarianism and social changes where the Parliament steadily reduced the number of capital offenses through several legislative acts.²⁸²

Reformers like Sir Samuel Romilly and Sir Robert Peel have asserted that the excessive use of death penalty does not fit into the principle of justice and humanity.²⁸³ Opposition against the practice of capital punishment gained momentum during the twentieth century as arguments were advanced by critics on the basis that the process involved the risk of wrongful conviction,

²⁷⁸ Ibid.

²⁷⁹ Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (Stevens & Sons 1948) vol 1, 3–8.

²⁸⁰ Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (Stevens & Sons 1948) vol 1, 3–8.

²⁸¹ V A C Gatrell, *The Hanging Tree: Execution and the English People 1770–1868* (OUP 1994) 29.

²⁸² Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (Stevens & Sons 1948) vol 4, 612.

²⁸³ Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England* (Continuum 1993) 102.

lack of adequate evidence supporting deterrent effects, and inconsistency with modern human rights.²⁸⁴ Some controversial cases such as those of Timothy Evans and Derek Bentley further raised fears of miscarriage of justice.²⁸⁵ Under the Act, capital punishment for murder in Great Britain was suspended and mandatory life imprisonment substituted. The suspension was made permanent in 1969.²⁸⁶ Despite abolishing the death penalty for murder, some special exceptions like treason, piracy with violence, and military offences allowed its application.²⁸⁷ However, Parliament was gradually stripping away these exceptions. The United Kingdom ratified the European Convention on Human Rights (ECHR), guaranteeing fundamental rights and freedoms.²⁸⁸ Protocol No. 6 to the ECHR, signed in 1983, provides for the abolition of the death penalty in times of peace.²⁸⁹ Protocol No. 13, signed in 2002, provides for the complete abolition of the death penalty in all circumstances, even in time of war.²⁹⁰ From this point onwards, the United Kingdom became one of the most prominent supporters of the abolitionist cause globally.

Successive governments of the United Kingdom actively contributed to international efforts aimed at restraining and abolishing capital punishment worldwide.²⁹¹ The rate of crime has been fluctuating since the abolition of the death penalty, however, there is no convincing evidence that its abolishment led to an increase in criminal activity.²⁹² For Nigeria, the UK is an example of several important lessons. Firstly, it shows how it is possible to attain abolition gradually through legislation while not compromising the goals of criminal justice. Secondly, it points out the risks of wrongful convictions and the irrevocability of executions. Thirdly, it exemplifies how international standards can be used to shape domestic policy in criminal law.

²⁸⁴ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, OUP 2015) 49.

²⁸⁵ David Pannick, *Judges* (OUP 1987) 153.

²⁸⁶ Murder (Abolition of Death Penalty) Act 1969 (UK).

²⁸⁷ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, OUP 2015) 51.

²⁸⁸ European Convention on Human Rights 1950.

²⁸⁹ Protocol No 6 to the European Convention on Human Rights 1983.

²⁹⁰ Protocol No 13 to the European Convention on Human Rights 2002.

²⁹¹ United Kingdom Foreign, Commonwealth and Development Office, Human Rights and Democracy Report 2023.

²⁹² Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, OUP 2015) 54.

And, fourthly, it shows how effective the punishment of life imprisonment is as an alternative to execution. The British experience is one of the most significant examples in modern legal history.

ii. CANADA

Initially, capital punishment existed in Canada as part of English common law. After Canada became a confederation in 1867, the death penalty was provided for murder, treason, and some military offenses in the Criminal Code.²⁹³ With time, issues such as miscarriages of justice and the emergence of different societal attitudes led to stricter restrictions on the practice of capital punishment.²⁹⁴ In 1976, the government adopted the Criminal Law Amendment Act, which prohibited capital punishment in ordinary criminal cases.²⁹⁵ The death penalty could still be used in some military cases until 1998.²⁹⁶ The adoption of the Canadian Charter of Rights and Freedoms in 1982 ensured further constitutional protections regarding rights to life, liberty, and security of the person.²⁹⁷ One important case on the issue was *United States v. Burns*.²⁹⁸ It was a case about whether Canada could extradite people to the United States without guarantees that the people were not going to be executed. The Supreme Court ruled that extradition without these guarantees would usually violate principles of fundamental justice under the Charter.²⁹⁹ The Court noted that Canada's commitment to human rights and abolition meant extreme vigilance when dealing with cases where people could be executed in another country.³⁰⁰

This ruling reflected understanding of the Supreme Court that capital punishment is an irreversible punishment, the possibility of wrongful convictions, and lack of evidence showing

²⁹³ Criminal Code of Canada 1892.

²⁹⁴ Carolyn Strange, *Toronto's Girl Problem* (University of Toronto Press 1995) 118.

²⁹⁵ Criminal Law Amendment Act 1976 (Canada).

²⁹⁶ National Defence Act Amendment 1998 (Canada).

²⁹⁷ Canadian Charter of Rights and Freedoms 1982, s 7.

²⁹⁸ *United States v Burns* [2001] 1 SCR 283.

²⁹⁹ *Ibid*, para 124.

³⁰⁰ *Ibid*, para 127.

that execution can be a better deterrent than life imprisonment.³⁰¹ Canada is also signatory to the International Covenant on Civil and Political Rights and the Second Optional Protocol with a view to the abolition of the death penalty.³⁰² These agreements strengthen its international position against capital punishment. Nigeria can look to Canada for a model of how constitutional rights case law may incrementally broaden protection of the right to life. Abolition and sound law enforcement can coexist, as shown by the Canadian experience.

iii. Germany

Traditionally, capital punishment was applied in different cases within German states as in the Nazi period, there was an enormous increase in the application of capital punishment; and it often served as an instrument of political repression.³⁰³ The abuse of state authority in this period had a great impact on the later development of the constitution. After the end of the Nazi Germany in 1945, the authors of the Basic Law aimed at setting up a constitutional system based on respect for human dignity, democracy and the rule of law.³⁰⁴ The death penalty is abolished - Article 102³⁰⁵ of the Basic Law declares this clearly and strongly. Human dignity is considered to be of great significance within German constitutional law. Article 1(1)³⁰⁶ of the Basic Law states that human dignity is inviolable and must be respected and protected by all State authority. It is noted that Articles 102 and 1 must be taken into account together since there is no consistency between the deliberate action of the State in executing the death penalty and the notion of human dignity.³⁰⁷ Germany is also obligated to comply with the European Convention on Human Rights and other various international human rights treaties.³⁰⁸ From

³⁰¹ *ibid* para 68.

³⁰² Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty 1989.

³⁰³ Richard Evans, *Rituals of Retribution: Capital Punishment in Germany 1600–1987* (OUP 1996) 851.

³⁰⁴ Donald Kommers and Russell Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany* (3rd edn, Duke University Press 2012) 356.

³⁰⁵ Basic Law for the Federal Republic of Germany 1949, art 102.

³⁰⁶ *Ibid*, art 1(1).

³⁰⁷ Kommers and Miller (n 304) 357.

³⁰⁸ European Convention on Human Rights 1950.

the experience of Germany, it may be seen how the past atrocities may define the constitutional values. The case of Germany is very important for Nigeria.

iv. France

The practice of applying the death penalty has a long history in France and was actively practiced in the times of Ancien Régime.³⁰⁹ Before the French Revolution, there were many different ways of execution depending on the social status of an accused person.³¹⁰ The guillotine appeared in the period of the French Revolution as a more humane and equal way of execution.³¹¹ This device became one of the most famous symbols of capital punishment in the world and was actively applied in the period of the Reign of Terror.³¹² Intellectuals, philosophers, and lawyers criticized not only the moral, but also the practical value of the executions.³¹³ One of the most important opponents of the death penalty was Victor Hugo, who stated that it is not civilized and violates human dignity.³¹⁴

In post-World War II era, European human rights movements started to attack the legality of death penalty more and more actively. Still, France kept using it longer than most Western European countries.³¹⁵ The last execution in France took place in 1977 when Hamida Djandoubi was guillotined.³¹⁶ The critical turning point occurred following the election of President François Mitterrand in 1981. Badinter was made the Minister of Justice by President Mitterrand. He became one of the greatest abolitionists of the death penalty in the history of

³⁰⁹ Jean-Marie Carbasse, *Histoire du Droit Pénal et de la Justice Criminelle* (PUF 2000) 287.

³¹⁰ Jean-Marie Carbasse, *Histoire du Droit Pénal et de la Justice Criminelle* (PUF 2000) 287.

³¹¹ Daniel Arasse, *The Guillotine and the Terror* (Allen Lane 1989) 16.

³¹² Ibid, 31.

³¹³ Robert Badinter, *L'Abolition* (Fayard 2000) 17.

³¹⁴ Victor Hugo, *Le Dernier Jour d'un Condamné* (Charles Gosselin 1829).

³¹⁵ Hood and Hoyle (n 287) 75.

³¹⁶ Robert Badinter, *L'Abolition* (Fayard 2000) 24.

France.³¹⁷ The law abolishing the death penalty was passed in the French Parliament in September 1981.³¹⁸ In the debates in Parliament, Badinter contended that the state should not kill and stressed that there is always a risk of wrongful convictions.³¹⁹ France later solidified its position regarding the abolition of the death penalty through constitutional amendments. Article 66-1 was added to the French Constitution in 2007 which states that “No one shall be sentenced to death.”³²⁰ France is also a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms and has adopted Protocols Nos. 6 and 13.³²¹ These legal instruments strengthen the international commitment of the country to maintain abolition. From the case of France, the value of constitutional entrenchment in safeguarding human rights from the vagaries of politics can be seen. This applies to Nigeria as well.

4.3. Criminal Justice Trends Post-Abolition

One of the most common arguments raised in favor of capital punishment is that the abolition of capital punishment will result in the rise of violent crimes. Hence, it is necessary to explore the criminal justice system trends in abolitionist states to establish whether there is any empirical proof that supports this argument. Abolition has been generally followed by the implementation of other forms of sanctions, especially life imprisonment and long prison sentences.³²² In most cases, the law allows life imprisonment for murder, terrorism, treason, and genocides.³²³ In the United Kingdom, for instance, when the practice of capital punishment for murder was abolished in 1965, fears arose that there would be a spike in the number of homicides.³²⁴ Yet, later analysis showed no correlation between the abolition of the practice and rising numbers of murders. Another example comes from Canada, before the abolition of capital punishment in 1976, there were concerns about how abolishing the practice could

³¹⁷ Ibid, 29.

³¹⁸ Law No 81-908 of 9 October 1981 (France).

³¹⁹ Robert Badinter, *Parliamentary Speech on Abolition of the Death Penalty* (17 September 1981).

³²⁰ Constitution of the French Republic 1958, art 66-1.

³²¹ Protocol No 6 and Protocol No 13 to the European Convention on Human Rights.

³²² Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, OUP 2015) 389.

³²³ William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, CUP 2002) 17.

³²⁴ Leon Radzinowicz and Joan King, *The Growth of Crime* (Penguin Books 1977) 211.

impact public safety. Yet, over the next few decades, data showed a marked drop in the number of homicides committed.³²⁵ Though many things contributed to such a trend, the data indicated that there was no increase in violent crimes following abolition.³²⁶ Another popular case often referred to by both proponents and opponents of abolishment is the one in South Africa. After the Constitutional Court's ruling in *S v Makwanyane and Another*,³²⁷ it was claimed that violent crimes will increase in number due to the abolishment of capital punishment. Though crime rates have been high after the abolishment in South Africa, most studies tend to connect such trends not with the abolishment but with socioeconomic inequalities, unemployment, urbanization, organized crime, and poor policing.³²⁸ The Rwandan case illustrates the weaknesses of deterrence-based arguments for retention.

Even after abolishing the death penalty in 2007, Rwanda has managed to pursue crimes associated with genocide and other grave crimes via imprisonment, not execution.³²⁹ Rwanda managed to maintain public order and administer justice without using the death penalty. This proves that severe penalties for criminal activities do not require the intentional taking of life by the State.³³⁰ Abolition has also spurred changes in prison administration because those offenders who would otherwise have received death penalties are now put into long-term imprisonment, compelling the governments to improve their systems for corrections and formulate policies on rehabilitation, prison administration, and human rights protection.³³¹ Many cases around the world have shown that judicial systems are not error-free and sometimes innocent people can be wrongfully convicted of grave offenses.³³² Technological progress is another aspect that has influenced criminal justice trends as it advances in forensic science, DNA testing, computerized monitoring, and methods of criminal investigations have

³²⁵ Department of Justice Canada, *A Review of Research on Capital Punishment* (2018) 15.

³²⁶ *Ibid.*

³²⁷ *S v Makwanyane and Another* 1995 (3) SA 391 (CC).

³²⁸ Jonathan Burchell, *Principles of Criminal Law* (5th edn, Juta 2016) 37.

³²⁹ Organic Law No 31/2007 Relating to the Abolition of the Death Penalty (Rwanda).

³³⁰ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (CUP 2010) 213.

³³¹ Schabas (n 323) 33.

³³² Samuel Gross and Michael Shaffer, 'Exonerations in the United States' (2012) 22 *Journal of Criminal Law and Criminology* 523.

increased law enforcement abilities.³³³ This suggests that the efficiency of crime prevention is more dependent on the certainty of prosecution than on the severity of punishment. Nearly all developed democracies have moved away from capital punishment and have devised other methods of dealing with criminal activity.³³⁴ This is due to the belief that criminal justice systems must be focused on human dignity, proportionality, and justice while providing public safety. However, there are problems with abolition. One critique that can be raised against abolition is the financial burden of life imprisonment.³³⁵ Other critics suggest that there are some forms of crimes which are so terrible that nothing less than execution will suffice as punishment.³³⁶ Despite such shortcomings, available data clearly shows that abolition has not impacted the effective administration of criminal justice. On the contrary, most nations have managed to maintain their citizens' safety by using incarceration, better policing, court reforms, and various social policies targeting the root cause of crime.³³⁷ In Nigeria's case, the examples mentioned above are especially helpful. These show that the effectiveness of criminal justice is not dependent on the availability of harsh penalties but on the efficiency of police organizations, courts, jails, and social policies. Therefore, the data obtained from countries practicing capital punishment abolition seems to be more beneficial than the latter itself.

4.4. Public Perception and Arguments On Capital Punishment

Public opinion on the issue of capital punishment is always split in half, with both positive and negative views equally articulated. Some of the areas in which the issue of capital punishment can be considered include legality, morality, religion, constitutionality, and criminology. It is important to understand some of these divergent views while considering the future of capital punishment in Nigeria and other countries which still retain it. Among the strongest arguments made in support of capital punishment is that of retribution. According to this theory,

³³³ David Ormerod and Karl Laird, *Smith, Hogan and Ormerod's Criminal Law* (16th edn, OUP 2021) 45.

³³⁴ Schabas (n 323) 58.

³³⁵ Ernest van den Haag, *Punishing Criminals* (Basic Books 1975) 214.

³³⁶ Cass Sunstein and Adrian Vermeule, 'Is Capital Punishment Morally Required?' (2005) 58 *Stanford Law Review* 703.

³³⁷ Hood and Hoyle (n 322) 408.

punishment ought to match the nature of the crime committed.³³⁸ One popular justification for the death penalty is the notion of “just deserts,” whereby justice is seen as necessitating the victimizing offender be punished to the degree they’ve wronged society.³³⁹ Those who commit crimes such as murder, terrorism, genocide, and treason need to be subjected to the most extreme form of punishment, which can only be achieved through the imposition of the death penalty.³⁴⁰ Deterrence is another major reason provided for retention of the death penalty.³⁴¹ Retentionists believe that the very fear of death helps in deterring an individual from committing a capital offense.³⁴² Deterrence based reasons are especially convincing when there is an increase in violent crime. The governments feeling pressured to deal with the problem often present capital punishment as a requirement for law and order.³⁴³ However, as already mentioned above, evidence supporting the claim is rather ambiguous. The next reason is incapacitation. Proponents of capital punishment believe that execution ensures that dangerous criminals are not able to repeat their offenses again.³⁴⁴

Unlike imprisonment where the criminal can potentially run away or be paroled later, execution ensures that the offender will not be able to harm anyone ever again.³⁴⁵ Finally, economic reasons are sometimes presented to justify the death penalty. Proponents claim that by executing offenders, one lowers the expenses required to detain them.³⁴⁶ Some interpretations of Christianity, Islam, and traditional religions favor the death penalty for certain crimes.³⁴⁷ Scripture from the Bible, including Genesis 9:6, and Islamic criminal law are examples of religious arguments used in support of the death penalty.³⁴⁸ Although these religious arguments exist, there is a lot of opposition to the death penalty. One of the most persuasive abolitionist

³³⁸ Immanuel Kant, *The Metaphysics of Morals* (Mary Gregor tr, CUP 1996) 105.

³³⁹ Ibid.

³⁴⁰ Ernest van den Haag, *Punishing Criminals* (Basic Books 1975) 197.

³⁴¹ Isaac Ehrlich, ‘The Deterrent Effect of Capital Punishment’ (1975) 65 *American Economic Review* 397.

³⁴² Ibid.

³⁴³ Hood and Hoyle (n 322) 327.

³⁴⁴ Van den Haag (n 340) 203.

³⁴⁵ Ibid.

³⁴⁶ Ibid, 214.

³⁴⁷ Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England* (Continuum 1993) 51.

³⁴⁸ Muhammad Abdel Haleem, *Understanding the Qur'an* (IB Tauris 2010) 132.

arguments is the argument about the sacredness of human life. It is believed that humans have innate dignity and thus the state does not have the right to execute anyone.³⁴⁹ From the point of view of human rights advocates, the right to life is the primary right and the basis of all others.³⁵⁰ Wrongful conviction is also another important critique. Every criminal justice system makes mistakes, and some of those mistakes end up in executions which cannot be reversed or corrected.³⁵¹ Several posthumous exonerations in different nations have only served to highlight problems concerning the fallibility of the criminal justice process.³⁵² Lastly, the discriminatory use of capital punishment is also an important problem as different social and economic variables along with race and ethnicity have been linked to the likelihood of being sentenced to death.³⁵³ Many condemned inmates typically spend a large amount of time before execution in the state of great uncertainty.³⁵⁴ Such a condition is often referred to as the "death row syndrome" and acknowledged by a number of courts as a kind of psychological torture which contradicts human dignity.³⁵⁵ Public opinion on capital punishment differs widely between states. Public attitude towards capital punishment in Nigeria is rather contradictory as high rates of insecurity, terrorism, robberies, kidnappings, and violent crime result in increased public support for the death penalty.³⁵⁶ On the other hand, greater emphasis on human rights standards and judicial reforms creates discussion about the future of capital punishment in the legal system of Nigeria. Thus, the debate around capital punishment reveals a conflict between punishment and human rights, retribution and rehabilitation, public safety and constitutionalism.

4.5. Lessons For Nigeria and Recommendations From Comparative Jurisdictions

³⁴⁹ William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, CUP 2002) 7.

³⁵⁰ Universal Declaration of Human Rights 1948, art 3.

³⁵¹ Samuel Gross and Michael Shaffer, 'Exonerations in the United States' (2012) 22 *Journal of Criminal Law and Criminology* 523.

³⁵² *Ibid.*

³⁵³ Hood and Hoyle (n 322) 367.

³⁵⁴ *Pratt v Attorney-General for Jamaica* [1994] 2 AC 1 (PC).

³⁵⁵ *Soering v United Kingdom* (1989) 11 EHRR 439.

³⁵⁶ Yemi Akinseye-George, *Criminal Justice, Human Rights and the Death Penalty in Nigeria* (NIALS Press 2019) 74.

The comparative study on capital punishment in select African states and abolitionist jurisdictions has shown some important legal and constitutional trends that have relevance to current debates on the topic in Nigeria. Even though the specific conditions in terms of history, politics, and society vary in different jurisdictions, there are some common themes that have emerged out of their experience. It is important to note these themes as they will be relevant to Nigeria as it tries to reconcile the requirements of criminal justice, national security, constitutionalism, and human rights. The most important lesson to be learned from the comparative study is that there has been an increasing international acceptance of the notion of sanctity of life and the value of human dignity as central constitutional values. For example, states like South Africa, Germany, France, and Canada have abolished capital punishment because it was deemed to be inconsistent with the inherent dignity of the human being.³⁵⁷ The second lesson that can be learned from these countries relates to the role of constitutional adjudication in reforming criminal justice systems. Cases such as *S v Makwanyane*³⁵⁸ in South Africa, *Attorney General v Susan Kigula and 417 Others*³⁵⁹ in Uganda, and *Francis Karioko Muruatetu & Another v Republic*³⁶⁰ in Kenya are all illustrations of how courts of various states can significantly influence death penalty jurisprudence through constitutional interpretation.

The Nigerian courts could examine the issues regarding whether the application of mandatory death sentences for crimes like armed robbery and murder conforms to the principles of individualized sentencing and due process under the Constitution.³⁶¹ One more lesson learned from comparative analysis includes the tendency towards life imprisonment. All countries which abolished the death penalty have introduced life imprisonment or long-term imprisonment.³⁶² Such alternatives allow offenders to be punished while avoiding irreparable

³⁵⁷ William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, Cambridge University Press 2002) 61.

³⁵⁸ *S v Makwanyane and Another* 1995 (3) SA 391 (CC).

³⁵⁹ *Attorney General v Susan Kigula and 417 Others* Constitutional Appeal No 3 of 2006 (Supreme Court of Uganda).

³⁶⁰ *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR (SCK).

³⁶¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36.

³⁶² Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015) 389.

effects of execution. Most importantly, these countries did not witness any collapse of criminal justice systems after abolition but retained accountability through imprisonment, enhanced policing, and judicial reforms.³⁶³ With respect to Nigeria, this implies that criminal justice effectiveness must not be judged in terms of access to capital punishment alone. Rather, greater focus ought to be paid to effective investigation of offenses, efficient prosecution, avoidance of delay in criminal proceedings, and correction facilities.³⁶⁴ This lesson is applicable to Nigeria's attempts to tackle the problems of terrorism, insurgency, banditry, and other forms of criminal violence. Nigeria is a state party to a number of international human rights treaties that promote the protection of human life and dignity.³⁶⁵ These instruments do not currently oblige Nigeria to abandon the death penalty but they call for a progressive restriction on the use of death penalty. Therefore, Nigeria's retention of the death penalty is increasingly making Nigeria an outlier in international human rights trends.³⁶⁶

³⁶³ William A Schabas, *The Death Penalty as Cruel Treatment and Torture* (Northeastern University Press 1996) 87.

³⁶⁴ Yemi Akinseye-George, *Criminal Justice, Human Rights and the Death Penalty in Nigeria* (NIALS Press 2019) 84.

³⁶⁵ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004.

³⁶⁶ Schabas (n 349) 103.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSIONS.

5.1 Summary of Findings

This study focused on the Nigeria's death penalty's legitimacy from a comparative legal standpoint. The study examined Nigeria's constitutional framework pertaining to the death penalty, pertinent court rulings, legislative legislation, and comparable trends in a few jurisdictions that have either abolished or kept the death sentence. According to the analysis, Nigeria's death punishment is still constitutionally permissible. The Federal Republic of Nigeria 1999 (as amended) Constitution's Section 33(1)³⁶⁷ clearly acknowledges that a court sentence for a criminal offense may result in the deprivation of life. As a result, Nigerian courts have continuously maintained that the death penalty is constitutional, especially in situations involving murder, armed robbery, and other crimes covered by military law.³⁶⁸ The study also showed that the death sentence still sparks important legal, ethical, and human rights discussions notwithstanding its constitutional validity. The death penalty's detractors contend that it violates both the fundamental right to life and the changing international human rights norms, which increasingly support abolition.³⁶⁹ However, proponents contend that the death sentence represents social desires for justice and revenge and acts as a deterrence against significant crimes.

A growing number of states have either constitutionally or legally abolished the death sentence, according to the comparative analysis. The study shows that death penalty is constitutional as

³⁶⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33(1).

³⁶⁸ *Kalu v State* (1998) 13 NWLR (Pt 583) 531 (SC).

³⁶⁹ *Ibid.*

it is given as a legal punishment and it is handed down by a court of competent jurisdiction as provided for by the Nigerian constitution. The statutory basis of the death penalty is enforced through different statutes like the criminal code and the penal code amongst others although there are some exceptions for death penalty where pregnant women,³⁷⁰ a person under 18,³⁷¹ and those granted prerogative of mercy.³⁷² Due to concerns about human dignity, the potential for erroneous convictions, and modern human rights concepts, nations like South Africa, the United Kingdom, and Canada have abolished the death penalty. Specifically, the ruling in *S v. Makwanyane*³⁷³ by the South African Constitutional Court developed a constitutional doctrine that puts the rights to life and human dignity ahead of punitive state interests. The study also discovered that a number of retentionist states, such as the US and several Asian nations, maintain the death penalty while putting procedural safeguards in place to reduce arbitrariness and injustices. That is to say, even if the views of abolitionists appear to be gaining ground, there are still some contradictions in the global legal framework. The continuous use of the death penalty in Nigeria is in contradiction with emerging international human rights standards, which is another major finding of the research. While Nigeria has ratified some of the international human rights conventions which protect the right to life, the death penalty is not explicitly forbidden by these conventions. However, states are increasingly being advised by international organizations to consider moratoriums and abolition.³⁷⁴

This study identified the crimes that attract death penalty in Nigeria, crimes like murder, armed robbery, treason, culpable homicide, amongst others. Also, practical problems have been identified with the implementation of death penalty sentence in Nigeria like delay in executions, lack of proper representation for the impoverished, the possibility of judicial errors, and

³⁷⁰ Administration of Criminal Justice Act (ACJA) 2015, s 404.

³⁷¹ Ibid, s 405.

³⁷² CFRN 1999; s 175, s 212.

³⁷³ *S v Makwanyane* 1995 (3) SA 391 (CC).

³⁷⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6.

psychological impact of detention for execution. Issues related to fairness, due process, and criminal justice administration were raised in relation to these problems. In conclusion, findings revealed that although Nigeria's constitution allows death penalty, there is increasing need to reconsider its continued use from comparative, international human rights and constitutional perspectives.

5.2 Recommendations

Based on the findings of this study, the following recommendations are proposed: Legislative and constitutional evaluation is needed in order to know whether the provision of death penalty is still required in Nigeria's criminal justice system, the National Assembly should start a thorough examination of the laws that specify it. International human rights norms, modern constitutional concepts, and actual data on deterrence should all be taken into account in such a review. Adoption of an Execution Moratorium A formal moratorium on executions should be adopted by the federal government while abolition is being considered. This strategy will bring Nigeria into line with new international norms while providing a chance to investigate the efficacy and ramifications of the death penalty in more detail.³⁷⁵ Stronger procedural protections ought to be put in place where the death penalty is still in place. This ought to include improved procedures for handling erroneous convictions, mandated appellate review, higher standards of proof, and assured access to capable legal counsel. The government should implement more comprehensive changes to enhance the criminal justice system's effectiveness and integrity. To avoid long-term incarceration on death row and to guarantee adherence to the constitutional requirements of a fair trial, delays in capital case trials and appeals should be minimized.

For capital crimes, lawmakers ought to think about substituting life in prison or other harsh penalties for the death penalty. While avoiding the irreparable effects of unjust executions, such options would protect public safety. Nigeria should keep interacting with international

³⁷⁵ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 4.

human rights organizations and think about enacting legislation that protects the right to life in accordance with international best practices.³⁷⁶ International law currently allows the death penalty in some situations, but the global effort to abolish it deserves careful study. Public discourse on the death penalty should be encouraged by government agencies, civil society organizations, and legal academics. Increased public participation would support well-informed policymaking and enable a fair evaluation of the practical, ethical, and legal ramifications of the death penalty.

5.3 Conclusion

This study used a comparative legal framework to investigate whether the death sentence is constitutional in Nigeria. According to this research, the 33(1) section of the Federal Republic of Nigeria 1999 (amended) Constitution still provides for the death penalty, and Nigerian courts have been maintaining this punishment. Thus, the criminal justice system in Nigeria still maintains the death penalty. It is true that this research revealed that constitutional validity does not always concern more the general issues of the effectiveness, attractiveness, and justice of the death penalty. In light of the factors such as human dignity, the sanctity of life, the possibility of judicial error, and evolving human rights norms, comparative experiences indicate an increased preference for abolition.

From the comparative perspective, it becomes clear that society's values affect the interpretation of the constitution which is a dynamic process. Many countries have concluded that it is possible to achieve the aims of criminal law with milder penalties despite the fact that some countries resort to the death penalty. These trends become important for considering the role of the death penalty in Nigeria's judicial system. Finally, the discussion on the death sentence in Nigeria raises not only legal but also public policy, justice, morality, and human rights questions. The fact that the death penalty is allowed by the Constitution does not exclude the need for reconsideration of the death penalty since it is a very relevant issue taking into

³⁷⁶ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (adopted 15 December 1989, entered into force 11 July 1991) 1642 UNTS 414.

account the tendency towards the abolition of this type of punishment in the world and difficulties of implementation.

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