

# RIGHT TO LIFE AND THE STATE'S POWER TO KILL: THE QUANDARY OVER DEATH PENALTY IN NIGERIA

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## ABSTRACT

*Nigeria has retained capital punishment despite the global movement in favor of its abolition. Notwithstanding the federal government's suspension of executions in 2004, some prisoners were sent to the gallows in 2006, 2013, and 2016. Presently, prisoners awaiting execution exceed 3,000, occasioned by state governors' hesitation to endorse execution warrants. Human rights groups have consistently called for its abolition in Nigeria, but this has been rebuffed by the government. This work probes the notion of the death penalty in Nigeria and the dilemma of the authorities entrusted with its implementation. It has also examined the debate to abolish or retain it, against the backdrop of Nigeria's present social, economic, religious, and multicultural circumstances. It finds that the death penalty is a human right issue and Nigeria should join the majority of states that have dispensed with the practice. The paper advocates a legally-backed and permanent suspension of executions and the eventual abolition of this form of punishment through a constitutional amendment.*

**Keywords:** Capital Punishment, Death Penalty, Deterrence, Human Rights.

## INTRODUCTION

The Nigerian legal system provides for different types of punishment, among them imprisonment, fines, caning, stoning, hanging, shooting, and lethal injection, after trial and conviction by a court of law (Idem & Udofia, 2018). Nigeria has performed executions since 1971, mostly of individuals convicted of armed robbery-murder, and treason (Akem & Patrick, 2020; Amnesty International, 1994).

During the military era (1<sup>st</sup> January 1984-28<sup>th</sup> May 1999), several convicted armed robbers and coup plotters were executed (Obadina, 1995; Uche, 2011). The infamous Abacha administration allegedly confirmed the execution of more than 100 persons, following trials and convictions which were usually unfair and lacked independence (Nwachukwu, 2017), among them the Ogoni Nine activists in 1995 (Hoff, 1995). The trial and hanging of the Ogoni activists, which included the literary guru, Ken Saro-Wiwa, was regarded as flawed (Nwachukwu, 2017) and consequently prompted the suspension of Nigeria from the Commonwealth in 1995 (Cable News Network, 1995; The Commonwealth, 1995).

Nigerian courts have in recent times handed down capital punishments for various offenses, which have further inflamed tensions and rekindled debates on the sustenance of capital punishment in Nigeria, against the backdrop of its global renunciation (Elechi et al., 2006). Nigerian society is undoubtedly divided as to which argument is superior or what path to follow. While human rights activists advocate an end to the death penalty, many Nigerians, including

politicians, scholars, victims, and ordinary members of the public lend support to its retention, at least for heinous crimes (Ologbosere, 2020).

Nigeria is going through a very trying time in its history, acquiring an ignominious description as a nation in a coma (Emmanuel, 2021). Most Nigerians live in fear as heartless people unleash terror on defenseless citizens, with many abducted from their homes, schools, offices, churches, and farmlands and slaughtered for ransom (Purity & Ogu, 2019; Ikechukwu, 2019). Arising from the upsurge in cases of sexual assault, some concerned persons, especially female students, have called for the death penalty for rapists (Ologbosere, 2020). A traditional monarch has also canvassed the death penalty for people implicated in corruption and rituals (Agbor, 2021).

Amid the seeming impotence and helplessness in combating crimes and insecurity, the federal and state governments have enacted a plethora of legislation, expanding the scope of offenses punishable by the death penalty. This indubitably makes nonsense of the campaign to end capital punishment. The citizens' disposition is also inimical to the aspiration to end the death penalty. In addition to demanding strong action by the government for protection, citizens sometimes take laws into their hands by lynching suspected criminals (Akinpelu, 2021). Where, therefore, does this leave Nigeria in the global drive to abolish capital punishment? This paper interrogates the death penalty and its relevance in Nigeria. The debate on its abolition or retention has also been analyzed in light of the current socio-economic downturn, security meltdown, and upsurge in crimes.

## Capital Punishment in Nigeria

Punishment is the deliberate administration of suffering on a convicted offender for a legal breach (Igwenyi et al., 2019; Ginneken, 2016). The punishment is capital if the death sentence is imposed, implying the deliberate execution of a person by the state as a sanction for a crime (Merriam-Webster.Com Dictionary, 2002). In other words, a convicted criminal is garroted on the orders of the state, after being found guilty of a capital offense. It is usually regarded as a basic part of the justice system, preserved especially for very serious infractions (Vuleta, 2022). The death penalty is a terminal punishment to be inflicted on an offender and has provoked fierce debates and controversies across the globe (Amnesty International, 2004). This is predicated on the fact that once the punishment is administered, it cannot be retracted or reviewed to address any flaws.

The function of the death penalty dates back to antiquity and found expression in ancient Greece (Hood, 1999), the Roman law, and among adherents of Judaism and Christianity (Igwenyi et al., 2019). Convicts were often crucified, drowned, beaten to death, stoned to death, hanged, or burnt alive for a wide range of misconduct.

In the periods after the Second World War, and the formation of the United Nations (UN), the promotion and protection of human rights assumed an international dimension. The UN, regional organizations, and human rights crusaders have led the movement to halt the death penalty, as it is regarded as an infringement on basic rights (Schabas, 1998). The clarion call has been heeded by 110 countries, which have proscribed the death penalty (Adediran, 2021). Sadly, Nigeria is yet to toe the line.

Thousands of condemned persons languish in prisons in Nigeria, having been convicted of common crimes (This Day, 2019). The mandatory death sentence is administered for crimes

like armed robbery and kidnapping considered non-heinous. Under Islamic law operational in the mainly Muslim north, adultery and sodomy are punishable by death. The governments in office in Nigeria since 29<sup>th</sup> May 1999 have played down capital punishment. State governors are disinclined to endorse death warrants, to facilitate executions. In January 2000, erstwhile president, Olusegun Obasanjo, granted a reprieve to death row inmates, who had been awaiting execution for over 20 years, by reducing their punishment to life imprisonment (Bourbeau et al., 2019). In 2003, the Obasanjo administration instituted a committee, the National Study Group on Death Penalty in Nigeria, to lend an advisory opinion on the death penalty (The New Humanitarian, 2003; Amnesty International, 2004). On 22 October 2004, the Study Group submitted a report recommending a deferment of all executions, to diminish the peril of innocent people being executed (Amnesty International, 2008). Despite the moratorium, seven convicts were clandestinely garroted in 2006 after their death sentences, imposed by a tribunal, were confirmed by Kano State authorities (The Guardian, 2013). Three inmates who had been on death row were executed in Edo State in 2016, in a process described as secretive (Faul, 2016).

While the crusade to end the death penalty takes the centre stage, Nigerian courts continue to hand down capital punishments regularly. The statistics of death sentences in Nigeria in the past decade is alarming: 2010 (151), 2011 (72), 2012 (56), 2013 (141), 2014 (659), 2015 (171), 2016 (527), 2017 (621), 2018 (46), 2019 (54), and 2020 (58) (Statista, 2022). The country has been described as being addicted to the death penalty (Whitehead, 2015). A Lagos High Court sentenced a man to death for theft of phones and wristwatches during an armed robbery operation (Erezi, 2020). In Ekiti State, a 24-year-old man incurred the death penalty for stealing phones and money while armed with dangerous weapons (Nejo, 2021). As of June 2021, Nigeria is said to have 2,956 inmates on death row (Aduge-Ani, 2021), ranking it the third country in the world in terms of the number of prisoners awaiting execution, after Iraq (7,900) and Pakistan (4,000) (Toromade, 2021).

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

Nigeria operates a constitutional democracy modeled after the United States' system. The rights of citizens and obligations of the state are enshrined in the 1999 Constitution, the grundnorm, from which all other laws derive their efficacy and validity (Arodovwe, 2022). Section 33(1) of the Nigerian Constitution stipulates that "*Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offense of which has been found guilty in Nigeria*". Nigeria is not immune to international laws on the protection of the right to life as preserved in Article 3 of the Universal Declaration of Human Rights 1948; and International Covenant on Civil and Political Rights 1966. The African Charter on Human and Peoples' Rights 1981, which has been domesticated in Nigeria, reinforces the inviolability of the right to life by stating that "*Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of this right*".

The right to life, however, is not absolute. It is qualified and a holder can be dispossessed under certain circumstances, without violating the constitution. Apart from implementing a guilty verdict by a court, the legal system also prescribes self-defense and defense of property; lawful arrest or preventing escape from lawful custody; suppression of a riot, insurrection, or mutiny; and death resulting from acts of war, as other qualifications to the right to life. Likewise,

a person who has been sentenced to death is entitled to exhaust his right of appeal before the verdict can be implemented. Premature execution would be an act of illegality and callousness on the part of the state.

In addition to the 1999 Constitution, the death penalty is allowed in Nigeria under a plethora of federal and state laws, which operate side by side (Igwenyi et al., 2019). These include the Armed Forces Act, Penal Code applicable in the northern states; Criminal Code applicable in southern states; Robbery and Firearms (Special Provisions) Act; the Terrorism (Prevention) Act 2011; and the sharia penal law applicable in 12 northern states. Offenses punishable by death include murder, armed robbery, treason, conspiracy for treason, treachery, mutiny, trial by ordeal, resulting in the death of another, and kidnapping in some states. Under the Penal Code, and the Sharia law, sodomy, adultery, apostasy, execution of an innocent person based on contrived evidence, and rebellion may also incur the death penalty. Some categories of offenders have been excluded from the death penalty, namely, juvenile offenders, pregnant women, and persons judicially declared to be insane or mentally ill (Igwenyi et al., 2019).

A major infraction on the right to life is extrajudicial killing. Its upswing in Nigeria is unlawful, unjust and a disdain for the sacredness of life. State and non-state actors are largely responsible for the crime, which they commit with impunity. The main perpetrators are the police, who torture, harass and kill hundreds of innocent people every year over acts of bribery and extortion (Akinsanmi, 2020). Non-state actors like Boko Haram, bandits, armed herdsmen, and other terrorist groups are also principal culprits. The lynching of suspected criminals by angry mobs is a persistent form of extrajudicial killing. Mob justice has been on the ascendancy in Nigeria (Akinpelu, 2021), partly blamed on mistrust of the legal, policing, and judicial system, which is often characterized by corruption and incompetence (Salihu et al., 2018).

### **To Stay or to go: The Nigerian Dilemma**

The global movement to end the death penalty has been relentless and unyielding, and Nigeria is not immune to the influences. Nigeria is entangled in debates and controversies for and against the death penalty. These debates were amplified after the hanging of three inmates in Edo State in 2016, despite pending appeals (Faul, 2016). The executions reignited a long-standing debate about the propriety of perpetuating the death penalty against the global movement to end the practice (The Guardian, 2013). Nigerians are divided on the application of capital punishment, and whether it should be preserved or abolished, hence the emergence of two schools-retentions and abolitionist.

### **Devotees of the Death Penalty**

Adherents of the death penalty, also labeled retentionist, argue that it is legal and constitutional, having been provided for in the 1999 Constitution. It is also employed as a system of justice (Miller, 2007), which many Nigerians appear to favor, especially as punishment for heinous crimes (Whitehead, 2015). Some crimes are deemed morally reprehensible and justice demands that their perpetrators pay the ultimate price (Rubino, 2017). Its absence will precipitate chaos and reprisal killings (Igwenyi et al., 2019). It is popular among some sections of society, particularly victims of violent crimes or their relatives. When serial killers and notorious armed robbers are executed, it generates a sense of justice and satisfaction. During the military era, public executions by firing squad attracted huge crowds (Obadina, 1995).

Retentionists argue that garroting is a legitimate exception to the enjoyment of the right to life, and the government seems justified in applying the punishment to protect the rest of the society from harm. The state can slay some people in order to enthrone the right of the majority of Nigerians (Uche & Udezo, 2011). The death penalty is active in Nigeria and serves to deter hardened and dangerous criminals, typified by the execution in Edo State of a notorious armed robber. A judge from Delta State, Marshal Umukoro, while delivering a lecture titled "*The Judiciary and Criminal Justice System*", implored state governors to endorse warrants for the execution of condemned criminals (Africanews, 2017), in order to act as a deterrent to persons who may wish to commit such crimes.

Retribution serves as the rationalization for the application of the death penalty in Nigeria. In a high-profile case of murder, one Maryam Sanda was handed the death penalty for killing her husband, which the judge said was "*Blood for blood*". In his judgment, Justice Yusuf Halilu said the convict "*should reap what she has sown*". The judgment was greeted with praises and outrage and divided Nigerians on the employment of capital punishment (Onyeji, 2020). While some argued that it was outdated, others saw it as capable of discouraging future crimes of that nature. Also while many trusted that the punishment was right and fair, others thought it was not about justice, but the promotion of vengeance.

### **The Perspective of Abolitionists**

Opposition to the death penalty is driven by human rights activists, non-governmental organizations, and civil society groups (Amnesty International, 2004). Often referred to as "*abolitionists*", these groups align themselves with the universal arguments which emphasized human rights, as encapsulated in various national and international legal mechanisms (Igwenyi et al., 2019; World Coalition, 2009). The debate revolves around the right to life; freedom from torture; and freedom from inhuman, cruel, and degrading treatment. It is essentially a moral problem, which divests convicts of their right to humanity and dignity (Iyaniwura, 2014). Significantly, the effectiveness of the Nigerian criminal justice structure has been called into question on several occasions. The Nigerian police force is often accused of corruption and lack of professionalism, and their ability to conduct a thorough investigation is in doubt. The police also suffer from fatigue and lack of resources. Oftentimes, the process is not fair to the poor (Amnesty International, 2008), as confession is extracted by coercion and torture, which can lead to a wrongful conviction and decapitation (Amnesty International, 2017).

The judicial system is sometimes flawed, feeble, and susceptible to error and corruption (Iyaniwura, 2014; Akanmidu, 2018; VOA News, 2010). Judges have been caught taking bribes and suspended for acts of misconduct (Onyekwere, 2021). The Nigerian case law is replete with questionable convictions, injustice, and violations of the right to a fair trial. This assertion is further reinforced by the discharge and acquittal of Clinton Kanu, who had been on death row for 27 years, after his conviction for murder. The Nigerian Supreme Court based its decision on a lack of evidence against him. Olatunji Olaide spent 24 years on death row before he was exonerated. Nasiru Bello was executed when his appeal was pending. On 17 December 2014, 54 soldiers were condemned to die by firing squad, after a secret trial by a military tribunal (Ibeh, 2014; Whitehead, 2015). Often, people facing capital charges are poor and end up being defended by a state-appointed attorney or inexperienced, newly enrolled lawyers from the National Youth Service Corps (Iyaniwura, 2014).

## Issues on Right to Life and the Death Penalty

The question as to whether Nigeria will relinquish the death penalty is embedded in complexities and controversies. Nigeria is a non-sectarian entity, with multifarious ethnic groups and a complex legal system (Uche & Udezo, 2011). The large population of an estimated 200 million, and attendant socio-economic challenges such as unemployment, accessibility to small arms, and high crime rates, constantly threaten the social fabric of the nation. This creates different perceptions and conceptions of crime and how best to tackle it. Therefore, the death penalty touches on people's emotions, psyche, and sensibility and the question of its retention or abolition calls for great caution. In discussing its abolition or otherwise, the following issues are relevant.

### The Role of the Sharia Criminal Law

The launch of the Sharia penal system seriously challenges the federal Constitution of 1999, which proclaims Nigeria a secular state (Okekeocha & Ewoh, 2013). The Constitution prohibits state religion but allows any state to establish a Sharia court for the administration of Islamic law (Amnesty International, 2004). When Nigeria embraced democracy in 1999, 12 states in the north made Islamic Sharia law an internal part of their criminal justice system (Human Rights Watch, 2004; Egbas, 2020). The administration of Sharia penal law was launched in Zamfara State in 1999 and became effective on 27 January 2000. The Quran acknowledges the right to life, unless such a right is denied by a court of law, as well as provides for situations under which a court would levy the death penalty (Peiffer, 2005). Sharia criminal law is applied in conjunction with the penal codes applicable in northern Nigeria, under which adultery, sodomy, lesbianism, rape, and blasphemy attract death by stoning (Peiffer, 2005).

The introduction of Sharia criminal law has been controversial from the outset, incurring both national and international concerns (Bourbeau et al., 2019). Its constitutionality has been widely debated, especially as regards certain offenses and accompanying sanctions. Former president, Olusegun Obasanjo, said the Constitution would ultimately prevail over certain provisions of the Sharia penal law. His Justice Minister declared the Sharia penal law discriminatory and unconstitutional (Macgregor, 2022), but did nothing more to test his opinion in court. In October 2001, a Sharia court in Sokoto State sentenced Safiya Hussaini to death by stoning for adultery, thus making her the first casualty of the new Islamic penal law (Human Rights Watch, 2001). In August 2002, a Sharia court in Katsina sentenced a woman, Amina Lawal to death by stoning, for engaging in sex outside marriage (Human Rights Watch, 2002a). Though these sentences were never enforced, there was an accompanying national and global outrage. In another application of the Sharia penal law, one Sani Yakubu Rodi, aged 21, was tried, found guilty, and given the death sentence for murder in Katsina State. The sentence was affected on 3<sup>rd</sup> January 2002 in Kaduna prison (Human Rights Watch, 2002b). The accused had no legal representation and did not appeal the sentence, which was later confirmed by the state governor. In Kano, a Sharia court found an Islamic preacher, Abdul Nyssa, guilty of blasphemy against Prophet Mohammed and sentenced him to death in a trial allegedly conducted in secret (Africanews, 2016). On August 10, 2020, a Sharia court in Kano meted out a death sentence to a musician, Yahaya Sharif-Aminu, over a song he had written, performed, and shared on social media (Olufemi, 2020). The song was regarded as blasphemous, prompting some adherents to

demand his execution, in addition to having his family house razed by an angry mob. In May 2022, a female student of Shehu Shagari College of Education, Sokoto State, Deborah Samuel, was lynched by her schoolmates for alleged blasphemy (Badmus, 2022). She was stoned to death and her body was ignited by persons who acted as accusers, prosecutors, judges, and executors. Two of the perpetrators were later arrested and charged with breach of the public peace, and not murder (Enumah, 2022).

### **The Jurisprudence of Nigerian Courts on the Death Penalty**

Nigeria operates the Common Law system in which decisions of superior courts are binding and create precedents. Decisions of Nigerian courts, and the emerging jurisprudence, strongly support the death penalty, as typified by a profusion of cases. In a frequently cited case, the Appeal Court held that "*The sentence was well pronounced for the capital offense. It has the semblance of the Law of Moses: an eye to an eye, it is a good law to serve as deterrence in a mundane society where heartless and dangerous citizens abound in plenty*".

There is a plenitude of Nigerian Supreme Court judgments affirming the legality and enforceability of the punishment as enshrined in the statute books. The Supreme Court in *Kalu v State* (1998) 12 SCNJ held that capital punishment has not been outlawed and that the right to life provided for in the Constitution was qualified. The validity of sections 33(1), 233(2), and 243 of the 1999 Constitution were interrogated in *Adeniji v State*. The Court of Appeal held that the death penalty is expressly recognized by the 1999 Constitution and the sections cited above to validate the punishment. In the same vein, the Supreme Court in *Anthony Okoro v State* (2012) LPELR – SC 187/2007 upheld the legality of the death penalty and its various methods of execution, adding that such punishment did not constitute torture or inhuman or degrading treatment.

### **Lack of Government Support**

The Nigerian government does not have the appetite to abrogate the death penalty, even though executions are not being enforced. It is also noteworthy that as a member of The Commission on Human Rights, Nigeria abstained from voting on a UN resolution on the question of the death penalty (OHCHR, 2005), thereby abdicating obligations under international law. After the submission of the report, no further action was taken on the work of the National Study Group on the Death Penalty. The moratorium recommended by the Group in 2004, had been jettisoned on several occasions by some states without any consequence. In contempt of the moratorium, former president Good luck Jonathan, urged governors of the 36 states to sign warrants to expedite the execution of more than 900 inmates awaiting the gallows, to ease the large crowd in prisons nationwide. In July 2021, Minister of Interior, Rauf Aregbesola, enjoined state governors to sign death warrants for the execution of 3,008 condemned persons, comprising 2,952 males and 56 females. The action would decongest custodial facilities and advance the course of justice (Adediran, 2021). Of course, the governors did not heed that call; and no prisoner has been executed.

The federal authorities have not demonstrated any desire to outlaw capital punishment or establish a permanent and legally-backed moratorium. This lack of interest manifested in the enactment of the Terrorism (Prevention) Act 2011, which embodies the death penalty. Another federal law, the Administration of Criminal Justice Act 2015, provides for methods of execution.

In 2017, the federal legislation proposed capital punishment for kidnapping (Busari, 2017). It appears Nigeria is nowhere close to the abolition or abandonment of the death penalty. On the contrary, the string of crimes that attract the death sentence has been broadening. Several states have enacted laws prescribing capital punishment for kidnapping and cattle rustling (Adebisi & Olanrewaju, 2020). In 2019, a Senator, Aliyu Sabi Abdullahi, of the ruling party sponsored a bill (Prohibition of Hate Speech Bill) that prescribed the death penalty for hate speech (Jimoh et al., 2019).

### **Need for a Constitutional Amendment**

Abrogating the death penalty in Nigeria would require a constitutional amendment (Section 9(2) of the 1999 Constitution), especially Section 33(1) which recognizes the right to life, and the accompanying proviso (Nwachukwu, 2017). This procedure is long, complex, and cumbersome. The National Assembly and a significant number of State Assemblies must concur to effect an amendment. Thereafter, the alteration would be submitted for presidential assent. Getting the required number of votes would be difficult, especially as states are clamoring for capital punishment to combat insecurity, banditry, kidnapping, and terrorism.

### **Reluctance to Endorse the Certificate of Execution**

Prisoners on death row are traumatized, having to wait for many years for their executions to be carried out. State governors are required to endorse a certificate of execution before condemned prisoners are sent to the gallows. In most cases, they fail to carry through this statutory duty, thereby allowing affected inmates to languish in prison indefinitely (Nwachukwu, 2017). There is, however, some respite in the new Nigerian Correctional Service Act. Section 12 (2c) of the Act provides that where a condemned person has used up all legal processes for appeal, and the sentence has not been carried out in the last 10 years, the chief judge may commute the death sentence to life imprisonment. Hitherto, the power was vested in the governor, who rarely exercised it.

### **The Future of the Death Penalty in Nigeria**

Arising from the compelling and spirited arguments proffered by abolitionists, the Nigerian government, at all levels, should take steps to abandon the death penalty. However, any idea of its abolition looks like a distant dream (The Nation, 2019), as that method of punishment must first be expunged from the constitution. The Ninth National Assembly is reviewing the 1999 Constitution with the intention of effecting major amendments in critical areas. The Assembly's Committees on Constitution Review have convened public hearings in furtherance of the amendments (This Day, 2021). Various groups and individuals attended the hearings and presented memoranda on their expectations from the National Assembly (Emmanuel, 2021). In spite of the cacophonous tunes and rancorous atmosphere at the public hearings, no mention was made of renouncing the death penalty. Deleting it from the constitution was not up for discussion or on anyone's agenda.



## CONCLUSION

Nigeria operates a federal constitution, and for the death penalty to be abrogated, the 1999 Constitution must be altered to expunge it, and this appears not feasible in the present situation the country has found itself. There are, however, steps the government can take in lieu of executions. The legislative arms of government can collaborate to promulgate an official moratorium act. The government should no longer sign execution warrants, but supplant all death sentences with terms of imprisonment. Above all, human rights groups must key into the ongoing constitution review process and make a compelling case for its abolition. It is also important for the government to ratify treaties that abolish the death penalty, in order to enhance their potency and applicability in Nigeria.

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