

ARE CONDEMNED PERSONS ENTITLED TO ENFORCE THEIR FUNDAMENTAL RIGHTS?*

1.1 INTRODUCTION

If a person condemned to death by a court of competent jurisdiction complains under Chapter IV of the Federal Republic of Nigeria 1999 (the Constitution) that any of the provisions of this Chapter has been breached in regard to him, is he entitled to enforce this rights? And if he is so entitled, to which of the provisions, before which court can he seeks redress. These issues and other related ones will be examined in this paper with a view to determine whether or not a condemned person automatically forfeits his fundamental rights as soon as he is convicted and sentenced to death. This paper also evaluates the manner of execution of condemned prisoners by hanging in Nigeria vis-à-vis the evolving and dynamic International clamour from other jurisdictions that the death penalty has come to be regarded in contemporary human rights jurisprudence as a violation of the right not to be subjected to torture, inhuman and degrading punishment with particular searchlight on the inevitable long wait between the imposition of the death sentence and the actual infliction of death, usually referred to as the “death-row phenomenon” as a crucial factor in the characterization of the death penalty as a destructive, cruel and degrading “treatment in the evolving standards of civilization.

2.2 WHAT ARE HUMAN RIGHTS?

Human rights are difficult to define. They are better explained as those fundamental and inalienable rights which are essential for life as a human being. The law of Nature has bestowed on mankind certain inalienable rights which have been recognised and protected in all the constitutions of the world including Nigeria. Thus, all human rights are universal, indivisible and interdependent and interrelated.¹ Though many states regard human rights as falling within domestic jurisdiction and not a matter to be tackled by international law, nevertheless human rights is a subject of contemporary international law and the efforts to regulate human rights at an international level have gained momentum after World War II. It is in the realisation of this universal code of humanity that Nigeria ratified the African Charter on Human and Peoples’ Rights² to enable us move with the rest of the human race in the observance, implementation and enforcement of those rights. Before the current civilian dispensation precisely under late Gen. Abacha’s regime, Nigeria witnesses unprecedented records of human rights violation such as extra-judicial killing, torture, harassment and ill-treatment of citizens³. The Abubakar Regime ushered in some positive and significant developments in the observance of human rights.⁴ While the present civilian administration of President Obasanjo have set in motion, ways of improving human rights situation. The judiciary should actively show its impetus

readiness to complement or indeed surpass the efforts of the executive by an inspiring judicial approach to examine, define and recognise circumstances of human rights where appropriate and feasible.' The enforcement of human rights is a tribute to the rule of law being the first principle of democracy as exemplified in the doctrine of separation of powers⁶ which is antithetical to autocracy. It is worthy of note that the rule of law may sometimes be given some recognition under an autocratic governance or an abused democratic governance although the rule of law in such circumstances is constantly under stress which invariably affects the functioning of the judiciary. Yet under that state of affairs, the judiciary must strive to excel in considering cases of abuse of human rights in order to do what is feasible to redress such abuse.

It is therefore submitted that novel cases of human rights claims may arise in regard to the condemned prisoners in difficult situations like that of complaints of torture, inhuman and degrading treatment, the judiciary should be able to cope with the situations and circumstances of the time and prevailing operational conditions, but not on the mere reflection behind dim light, and sighting the shortened form of their silhouette readily conclude that they had a diminutive stature which makes it too impossible for them to attempt the job of solving human rights abuse of an unusual type.⁷ Under such circumstances, the court is expected to determine whether the cause of action brought by the condemned prisoner has merit or not depending on the strength of the case. The Court of Appeal Lagos Division extensively considered the rights or otherwise of a condemned person in the case of *Peter Nemi v. Attorney-General of Lagos State & Anor*,⁸ the appellant and four other persons were convicted of conspiracy to commit armed robbery and sentenced to death on February 28, 1986 after he had been in custody since he was arrested on September 9, 1982. His appeal was dismissed by the Court of Appeal on March 29, 1990 and by the Supreme Court on October 14, 1994.

The appellant then applied *ex parte* in an action filed in the Federal High Court, Lagos on January 17, 1995 for and was granted leave to enforce his fundamental right based on the following reliefs:

- (i) a declaration that the prison confinement of the Applicant under sentence of death since February 28, 1986 (a period of eight years) constitutes an infringement of Applicant's fundamental rights against torture, inhuman and degrading treatment protected by section 31(1)(a) of the Constitution of Federal Republic of Nigeria, 1979; and
- (ii) an order directing that the sentence of death on the applicant be quashed and/or commuted to such term of imprisonment as this honourable court may direct.

During the hearing of the motion on Notice, the defendants/respondents raised a preliminary objection on the grounds that:

- (a) the appellant had no legal capacity to institute the action.
- (b) the court lacked the jurisdiction to entertain it; and
- (c) the application was incompetent in law.

The learned trial judge, Olomojobi, J., upheld the objection and held that the court was not competent to adjudicate on the action.

The appellant raised only one issue for determination at the Court of Appeal Lagos:

Whether in the circumstance of this case, the Federal High Court is precluded from assuming jurisdiction to entertain the Appellant's application to enforce his fundamental rights.

The Court of Appeal held *inter alia* that it is open to a condemned person to seek redress by virtue of Section 42 of the 1979 Constitution (section 46 of the 1999 Constitution) in a High Court in the State where the breach took place.

3.3 THE RIGHTS OF APPEAL

A condemned person that has been sentenced to death by a High Court is entitled to exercise his right of appeal up to the Supreme Court even if the Court of Appeal affirms the sentence.

S.241(1) of the 1999 Constitution provides:

An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases –

- (a) final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;
- (b)
- (c) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this constitution;
- (d) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this constitution has been, is being or is likely to be, contravened in relation to any person;
- (e) decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death.

The Supreme Court has appellate jurisdiction in all the above stated instances from decisions of the Court of Appeal by virtue of Section 233 of the Constitution.

In the course of exercising his constitutional right, a condemned prisoner must not be rushed or stampeded into invoking his right of judicial process because of the irredeemable consequences of administration of death sentence. Similarly, the administrative procedure contained in the implementation of judicial pronouncement of

death sentence by the Executive arm serves as an avenue to correct certain fundamental anomalies, mistakes or errors of constitutional dimensions which did not emerge or could not have been ascertained during the length of trial and appeals.⁹ This factual dimension justifies the need for retaining the ample system of judicial review (in capital offences), and underscores the danger of “tinkering with the machinery of death.”¹⁰ The significance of this principle is vividly revealed in the case of *Baruwa v. The State*,¹¹ where the appellant and another were arrested and charged for murder in January 1982 and sentenced to death on June 24, 1985. The appellant appealed against his sentence. The process of appeal took 11 years after he was sentenced (and 14 years from the date of his arrest), delivering the judgment of the Court of Appeal, Justice Uwaifo held that the evidence adduced at the trial was grossly insufficient, tendentious, suspect and contradictory. The Learned Justice further held that the finding of guilty by the High Court was perverse and speculative, the appellant was discharged and acquitted. The pathetic aspects of this case are of two folds: it was established that the appellant only played the role of “good Samaritan” by reporting to the Police that an unknown man had lain dead or dying unattended to in a public place, this eventually earned him his long incarceration and agony. More disturbing is the fact that the other person charged along with Baruwa and sentenced to death at the High Court died in custody before the processing of appeal having undergone harrowing experience of prolonged incarceration in prison yards faced with the reality of a pending death sentence.

3.3.1 THE SANCTITY OF RIGHTS OF APPEAL

The rights of appeal open to a condemned person is fundamental and must be honoured in all ramifications, the appellant cannot be blamed for taking part in the judicial process of appeal even if the exercise of this right constitutes a delay in the process as it is made compulsory. The Respondent cannot apply that a suit brought by the appellant should be struck out or dismissed *in limine*.

The Supreme Court has held in a number of cases that a condemned man is entitled under the Constitution to appeal against his sentence up to the Supreme Court and cannot blame the authority for allowing him to exercise his constitutional rights through the judicial process of appeal even though he spends long period of years to undertake this right.¹² For instance in the case of *Peter Nemi v. The State*¹³ from the time of arrest (1982) up to the time the Supreme Court delivered its judgement in 1994, a period of 12 years has passed. Similarly in the case of *Baruwa v. The State*,¹⁴ the appellant was arrested in 1982 and sentenced to death in 1985 and on appeal to Court of Appeal judgment was delivered in 1996, a period of 14 years when he was discharged and acquitted.

The notion that all accused should receive fair and equal prosecutorial treatment by the State is an aspect of the rule of law. The Supreme Court reiterated this principle in *Nafiu Bello v. The State*,¹⁵ where the appellant sentenced to death on a charge of armed robbery by an High Court of Oyo State was executed while his appeal was pending in court. The Supreme Court berated this action and stated poignantly that the Attorney's General office demands greater personal responsibility in the performance of public duties and must ensure that all avenues of appeal have been exhausted before advising the Governor to confirm the execution. The court further awarded damages to the dependants of the appellant.

4.4 THE PREROGATIVE OF MERCY

A condemned person may apply in person or someone on his behalf or the prison authorities may forward his prison report for purposes of periodical review to the President or Governor of a State for clemency. An application of this nature must be accompanied with relevant particulars and testimonials from reputable persons verifying the conduct of the condemned person. This application must be rooted through the office of the Attorney-General¹⁶ of the Federation or of the State as the case may be.

According to Wade and Phillips,¹⁷ Prerogative of Mercy is the only means of reviewing judicially the judgment of a criminal court of final jurisdiction as a veritable means of rectifying any injustice through the grant of pardon. Before this application is considered, the judgment must be final and not subject to an appeal to a higher court.

The Attorney-General is empowered to render legal opinion on such an application of prerogative mercy in case of death sentence by either suggesting to the Advisory Council and the Chief Executive a recommendation of commutation of sentence from death to life imprisonment or refusing such an application.

CRIMINAL PROCEDURE ACT

A trial court itself can refer a case to the President or the Governor where the condemned person has been found to be of unsound mind and ordered that the convict be kept in custody during the Governor's pleasure.¹⁸ The office of the Governor upon the receipt of this report sends the file to the Attorney-General's office to prepare appropriate warrant based on the directions of the judge.

ROBBERY AND FIRE-ARMS ACT

After a conviction under the Robbery and Firearms (Special Provisions) Act 1990 is made the Chairman of the tribunal refers the sentence to the Governor for consideration, section 1(3) states:

The sentence of death imposed under this section may be executed by hanging the offender by the neck till he be dead or by causing him to suffer death by firing squad as the Governor may direct.¹⁹

Under Military regimes in Nigeria, the decision of this Tribunal was not subject to appeal i.e. the accused convicted is denied a right of appeal. But under the present dispensation, condemned persons are entitled to exercise their constitutional rights of appeal up to the Supreme Court. Due to the fact that ours is a crime infested society, attention is naturally focused on the punitive element of criminal law necessitating the setting apart from designated places called “prisons” for the confinement of offenders, the undesirable elements convicted of crimes. Unlike the awaiting trial persons, convicts enjoy relative care and attention of the prison authorities in terms of feeding and accommodation as it is the responsibility of the state to cater for them being recognised entities by law, while they exist the prison authorities must take them into consideration in their plans.²⁰ It is pertinent at this juncture to ask the following questions: Can it be rightly said that a condemned person has no right to life, cannot enforce any fundamental rights and is therefore as good as dead? Does it mean that a condemned prisoner can be lawfully starved to death by the prison authorities? Can he be lawfully punished, by a slow and systematic elimination of his limbs one after another, until he is dead?

Would any of these amount to inhuman treatment or torture? Is a condemned prisoner not a person or an individual?

In answering these questions, they must be thoroughly examined from every angle and determined in an action complaining of their breach; when breached, they are to be redressed in all circumstances as appropriate.

RIGHT TO LIFE

Section 33(1) of the Constitution provides:

Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

This section guarantees and protects the right to life. But it also recognises deprivation of life so long as it is pursuant to the execution of the sentence of a court in a criminal offence of which the accused has been found guilty in Nigeria. Thus Section 33(1) of the constitution permits death penalty so long as it is inflicted pursuant to the sentence of a court of law in Nigeria in a criminal offence. Therefore, the imposition or execution of the death sentence in Nigeria is not subjected to any form of arbitrary,

discriminatory or selective exercise of discretion on the part of any court or any other quarters whatever. The death penalty in Nigeria can by no stretch of the imagination be said to be invalid or unconstitutional.²¹ Apart from the provisions of Section 33(1), there are also provisions of sections 233(2)(d) and 241(1)(e) of the Constitution recognise the death penalty as a form of sentence. Furthermore death penalty is provided for by our criminal laws under Section 319 of the Criminal Code. Section 319(1) states:

Subject to the provisions of this Section any person who commits the offence of murder shall be sentenced to death.

It is therefore crystal clear from the provisions of the constitution that right to life is qualified and as such death penalty under such circumstance is constitutionally permissible and valid. It can therefore be rightly said that Section 33(1) of the Constitution is free from any ambiguity whatever. It cannot be derogated from. By the first part of this section, the Constitution, in plain language, recognises and protects the right to life. But by its subsequent part, or proviso is a qualifying clause which permits life to be taken in execution of the sentence of a court in respect of a criminal offence of which the accused has been found guilty.

RIGHT TO DIGNITY OF HUMAN PERSON

Section 34(1) states:

Every individual is entitled to respect for the dignity of his person, and accordingly –

- (a) no person shall be subjected to torture or to inhuman or degrading treatment.

Under the administration of criminal justice system when a person is sentenced to death the question of bail for him pending execution is impossible; he must be kept in custody for the final day. The condemned person is kept at a designated prison yard for a period of time before his execution is carried out.

This waiting period is known as the Death-row phenomenon. In Nigeria, death-row prisoners spend on average, more than 10 years in prison even after confirmation of their conviction and sentencing. Of all the rights guaranteed under Chapter IV of the 1999 Constitution, Section 34 appears to be the only right which confers unqualified right on a condemned person to seek redress in a High Court through Section 46 of the Constitution if he feels his fundamental right under Section 34(1) has been breached in regard to him. Thus, if after death sentence has passed and the accused is in prison custody and anything arises which injures his person, such will be a cause of action under fundamental rights. In such a case the death sentence stands, but a new cause of action has arisen which can be separately enforced and remedied.

Our Supreme Court has been called upon in cases of *Peter Nemi v. The State*,²³ *Tom v. The State*,²⁴ *Kalu v. The State*²⁴ in recent times to determine:

- (i) the validity or constitutionality of death penalty in Nigeria;
- (ii) whether long period of time for which a condemned prisoner has been awaiting his execution constitute torture, inhuman and degrading treatment to warrant his execution to be committed to terms of imprisonment.

It should be noted that learned counsel for the appellants in these cases, especially Olisa Agbakoba (now SAN) argued strongly and vehemently too that the issue raised in the appeal is novel and has not been determined in this country therefore it is not an issue to be brushed aside without first giving it a very serious and full consideration by examining the issue within the context of our constitutional provision and in conjunction with the relevant provisions of the African Charter on Human and Peoples' Rights. The Supreme Court admitted that "a very far-reaching constitutional question has been raised in the appeal"²⁵ as a result of which it empanelled a full court of seven justices, invited eminent counsel nationwide and Attorneys-General of all the States and the Federation as *amici curia* in addition to briefs filed by all counsel for the appellants and the states concerned.

After listening to arguments on all sides for and against issues raised in the appeal, the Supreme Court held *inter alia* that:

The confinement of the appellant under sentence of death for prolonged length of time from the date of his conviction is regrettable, it does not amount to torture, inhuman and degrading treatment.

Although the Supreme Court of Nigeria had the opportunities to consider the position of foreign jurisdictions through decided cases cited such as *Abott v. A.G. of Trinidad and Tobago*,²⁶ *Riley v. A.G. of Jamaica*,²⁷ and *Bell v. D.P.P. of Jamaica*²⁸ where the Privy Council took the hard and tortuous journey through the cases to reach a landmark decision on a provision in the Jamaican Constitution similar to Section 34(1)(a) of our Constitution particularly in the case of *Pratt v. A.G. for Jamaica*²⁹ to hold that prolonged custody of a condemned person from the date his conviction is affirmed by the highest Court of the land constitutes an infringement on human right of the prisoner in regard to his dignity to warrant either commutation of his death sentence to terms of imprisonment or release as the case may be. Nevertheless the conclusion of our Supreme Court to the effect that the undue delay in the execution of the death sentence, coupled with the deplorable conditions under which the prisoners awaiting execution were confined which gave rise to inhuman and degrading treatment complained of by the condemned person are not issues to be addressed by the courts but by the legislature is with due

respect untenable and invalid. It is not acceptable to hold that novel cases of human rights claims arising from indeterminable and unascertainable years of anticipatory execution cannot be remedied by the apex court of land through its judicial pronouncement to solve human rights abuse of an unusual type of this nature. In contemporary society, it is the duty of the judiciary to accept the challenge to confront and examine the novel aspect of human rights as daunting as the stress being undergone by the condemned prisoners in the circumstances.³⁰

It should be pointed out that the right not to be subjected to torture, inhuman or degrading treatment under Section 34(1)(a) of the 1999 Constitution is a non-derogable right, i.e., one of the rights that may not be derogated from by legislation. Those specific rights in respect of which the Constitution permits derogation by legislation are set out in Section 45(1) and (2) of the Constitution.

Section 45(1) and (2) provides as follows:

- (1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall Invalidate any law that is reasonably justifiable in a democratic society –
 - (a) in the interest of defence, public safety, public order, public morality or public health; or
 - (b) for the purpose of protecting the rights and freedom of other persons;
- (2) An act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency or measures that derogate from the provisions of sections 33 or 35 of this Constitution

It is therefore submitted that a condemned person cannot seek redress on specific rights namely: right to private and family life; right to freedom of thought, conscience and religion; right to freedom of expression and the press; right to peaceful assembly and association and right to freedom of movement by virtue of the fact that having tried and found guilty of a capital offence, the condemned person is restricted from enjoying these inalienable rights by operation of law. However, a condemned person is reasonably entitled to his “safety” and welfare within the prison’s regulations on the conditions of convicts in prison even though he is awaiting his execution. Thus while the condemned person is in the custody of the state, the state has a responsibility to ensure that he is not put in undue dangers of his health and safety. Therefore, if the state of health of a condemned person demands treatment on special drugs, it must be provided by the state and where these were not available and the prisoner waits to have access to this special drugs at his own expenses³¹ the prison authorities should oblige him to enjoy such necessary goods provided the administration of the said drugs is

carried out under the supervision or in the presence of medical doctor/physician in charge of the prison yards where the applicant is detained or hospitalised as the case may be. This arrangement is to ensure that the responsibility of the state to secure the prisoner's safety is in no way compromised.¹²

MANNER OF EXECUTION

A condemned prisoner is a person or an individual accordingly ending his life must be done in accordance to the due process of law. Under the Criminal Procedure Act, the manner of carrying out the sentence of death is by hanging. Therefore, in a case pertaining to the death row phenomenon, the appellant is entitled to allege that the execution by hanging is barbaric or otherwise and can even complain that the undue delay in the execution of the death sentence coupled with the deplorable conditions under which the prisoners awaiting execution were confined warrant commutation of his death sentence to life imprisonment.

It is trite law that death sentence is a reality and constitutional in Nigeria as a penalty for crimes, so heinous. At post-conviction stage, the offender can no longer rely on the presumption of innocence as there is an overriding presumption of guilt making the sentence of death as properly imposed. The due process of law is to ensure punishment only of the guilty and not of the innocent so as to ensure that those convicted of capital offence have been properly so convicted. It is the opinion of this writer that by operation of law murder being a heinous crime, the punishment highest known to law the principle of criminal jurisprudence demands that it must be cautiously implemented. Perhaps, it is in consonance with this cardinal principle of law that post-conviction periods of condemned prisoners (death-row phenomenon) serve as an important mechanism in correcting constitutional errors that is likely to occur during the trial and appeal process, for example, it was the denial of late Ken Saro wiwa and others the opportunity of death-row period before the process of their execution was carried out during late General Abacha Regime that led to universal condemnation of the Federal Military Government's action and the suspension of Nigeria from Committee of Commonwealth Nations.

It should be pointed out that learned counsel for the appellant in *Kalu v. The State* vehemently attacked the process of execution of death sentence in Nigeria. He made a copious reference to an article written by Professor Chris Barnard that:

The man's spinal cord will rupture at the point where it enters the skull, electro-chemical discharges will send his limbs flueing in a grotesque dance, eyes and tongue will start from the facial apertures under the assault of the rope and his bowels and bladder may simultaneously void themselves to soil the legs and drip on the floor...³³

The above-stated description has been quoted by the South African Constitutional Court in the case of *The State v. Makwanyane*,¹¹ where O'Regan J commented on the above description as follows:

Thus frank description of the execution process leaves little doubt that it is one which is destructive of human dignity ...

No doubt, this manner of execution is gory and sordid, it is better imagined than experienced, the task of a hangman is most daunting and should be exercised with great caution.

It is most disturbing to note that despite the fact that the Supreme Court of Nigeria conceded the point that the process of execution is sordid, the apex Court ruled that they were not concerned with the manner of carrying out the death sentence, but the sentence itself. The learned justices of the Supreme Court further held that anything else beyond the passing of the sentence is not the subject of appeal and that whatever process employed is not relevant. The Supreme Court further stated that the foreign decisions cited on the point though strongly persuasive appear academic. With due respect, this view is unacceptable under contemporary standards of decency in view of the enormity of pain being inflicted in course of carrying out this process. The mental agony inherent in this exercise is simply beyond question, harrowing and horrible and as such it is impermissibly cruel.

5.5 CONCLUSION

In the light of the foregoing, that much as the victim of a murderous assault was entitled to life, so also is the murderer liable to death for his deed. It remains uncontroverted that our constitution recognises death sentence and that manifests in the provision "save in execution of the sentence of a court" in section 33(1) above quoted. The sentence of death is fully recognised and approved by the constitution vide the provisions of Section 233(2)(d), 241(1)(e). Similarly section 319(1) of the criminal code under which a condemned person was tried and convicted only provided for the death penalty for the offence charged and not the sentence. Penalty in this context is not synonymous with sentence and the two must not be confused. The provision for the death sentence is prescribed under Section 367(1) & (2) of the Criminal Procedure Law – it reads:

- (1) The punishment of death is inflicted by hanging the offender by neck till he be dead.
- (2) Sentence of death shall be pronounced in the following form –
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.

Contrary to the argument that death sentence (by hanging) is barbaric and sordid, it still wears human face in the sense that its pronouncement acknowledges divine grace. The end result of capital punishment by hanging is intrinsically the same with death penalty by administering injection³⁵ as done prevalent in the United States of America – the resultant effect of both methods is Death. It is therefore our opinion that having regard to the historical and cultural backgrounds of our society, the generally held norms values, aspirations and local conditions that the death penalty is a necessary and acceptable form of punishment for heinous crimes. Shorn of procedural abuses, it helps to preserve equilibrium in the society by providing a measured and appropriate response to barbarous criminal acts that threaten the moral foundation and bastion of the Nigerian society. However, so long as capital punishment remains valid under the Nigerian legal system the state must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve by the executive. A situation whereby a condemned prisoner is kept in the death-row for over 13 years or more in anticipation of his execution is to say the least cruel, inhuman and degrading treatment. Except we reconsider the propriety of retaining death penalty as a dignifying form of punishment,³⁷ our judiciary will continue to be disturbed by the distressing spectacle of cases pertaining to death-row phenomenon arising from the long sojourns of condemned prisoners on death-row.

ENDNOTES AND REFERENCES

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See The Vienna Declaration of Human Rights and Programme of Action, June 25, 1993 which identified particularly vulnerable groups of individuals as being women, minorities, children, refugees, indigenous people, prisoners and persons with disabilities. See also Rebecca M. M. Wallace, International Law, 3rd Edition 1997 at p.205.

See African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 16 Vol. 1 LFN 1990, where Nigeria adopted the African Charter on Human and Peoples' Rights as part of her Municipal law.

See Nigeria Human Rights Report, September 1998 published by Constitutional Rights Project; Chapter 2 pp.13-46.

Op. cit. Chapter 1, pg.1.

See *Ogugu v. The State* (1994) 9 NWLR pt. 366 page 47.

See Adeniyi Olatubosun, "The Doctrine of Separation of Powers under the 1999 Constitution: A Myth Or Reality" to be published in a book, Essays on Constitutional Law ed. Prof. J. D. Ojo, University of Ibadan.

Per Olomojobi J., Federal High Court of Lagos in *Peter Nemi v. Attorney-General of Lagos State & Anor.* (unreported).

CA/L/221/95 delivered on Wednesday, July 3, 1996 reported in the Guardian July 30 1996.

For example in America it has been reported that over the past twenty-three years, a large number of persons awaiting execution on death row have ultimately been set free because they were proven to be innocent. See The Report of International Commission of Jurists Administration of the Death Penalty in the United States, June 1996 at page 64.

The Report of International Commission of Jurists etc. *op. cit.*
1999 NWLR

Peter Nemi v. Attorney General Lagos State [1996] 6 NWLR 42. *Effiom v. The State* [1995] 1 N.W.L.R. (Pt. 373) 507, *Kalu v. The State* [1998] 12 SCNJ 1, *Okoro v. The State* [1998] 12 SCNJ 84.

Op. cit.

Ibid.

[1980] 8-11 SC. 130.

See The Report of Mr. Tunji Oni, the then Solicitor-General and Permanent Secretary,

Ministry of Justice Oyo State presented to officers of the Ministry of Justice following the public reaction to the role of the Ministry in the execution of Nafiu Bello while his appeal was pending.

7. Constitutional Law, 6th Edition, pg. 303.
8. See Section 401 Criminal Procedure Act.
9. Death sentence by hanging is the manner recognised under the Criminal Code and Procedure, however death sentence by firing squad was introduced by the Military Regime of Gen. Gowon as a deterrent penalty for the members of public who may wish to venture into armed robbery.
10. See Adeniyi Olatubosun, "The Plight of Awaiting Trial Persons Under The Criminal Justice System In Nigeria" in Topical Issues in Nigerian Law, essays in Honour of Justice N. O. Adekola Ed. Laoye & Akintayo, Zenith Publishers 2000 at p.123.
11. Per Iguh J.S.C. in *Kalu v. The State* (*supra*) further observed, "If the framers of the constitution had wanted to abolish the death penalty they would have done so expressly. That abolition or retention of death penalty is a matter for the legislature to decide and it is not for the court to wade into judicial legislation.
12. *Ibid.*
13. *Ibid.*
14. *Ibid.*
15. Per Bello C.J.N. (as he then was).
16. [1979] 1 W.L.R. 1342.
17. [1983] A.C. 719 (P.C.)
18. (1985) 2 All E.R. 585.
19. (1993) 4 All E.R. 769.
20. See *Catholic Commission for Justice and Peace in Zimbabwe v. A.G.* No. S.C. 73/1993 unreported delivered on June 24, 1993 now [1993] (4) S.A. 239 (ZSC), where the Supreme Court of Zimbabwe in its original jurisdiction under Section 24 of their Constitution entertained a similar case.
21. See Adeniyi Olatubosun, "Constraints In The Administration Of Criminal Justice In Nigeria" M.Phil Thesis (unpublished) 2000. See also *Chief Gani Fawehinmi v. Gen. Sani Abacha & Ors.* Suit No. CA/L/141/96 reported in *The Guardian*, July 16, 1996.
22. See Hon. Justice Obaseki, J.S.C. "Causes of Congestion in Prisons and Proposals for Solution" Law Development and Administration in Nigeria 1990 published by the Federal Ministry of Justice, Law Review Series 1990 pp. 289-320.
23. *Rand Daily Mail* of June 12, 1978.
24. [1995](6) B.C.L.R. 665 (CC); [1995] S.A.C.L.R. LEXIS 218.

- 5. Recently in America, the Oklahoma City bomber Timothy McVeigh was executed by lethal injection on Monday June 11, 2001 at the Federal Prison in Terre Haute, United States. He became the first prisoner executed by the U.S. government in 38 years reported in The Punch, Tuesday June 12, 2001.
- i. See Adeniyi Olatubosun, "Addressing the Emerging Issues from the Administration of Death Penalty in Nigeria" being a Study Proposal Plan for Ph.D. Thesis of Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria. See also the address delivered by Governor Lam. Adesina of Oyo State on Wednesday 27th June 2001 at House of Chiefs, Secretariat Ibadan during the swearing-in of 7 new judges in Oyo State.