



AHMADU BELLO UNIVERSITY LAW JOURNAL

FACULTY OF LAW

AHMADU BELLO UNIVERSITY, ZARIA - NIGERIA.

website: <https://abulj.org.ng> | e-mail: abulj@abu.edu.ng

EXAMINATION OF ETHICAL, LEGAL, AND SOCIETAL IMPLICATIONS OF DEATH PENALTY IN NIGERIA

***NENGI A. BANIGO-ABAH**

LEGBORSI TONY-FRANCIS**

Abstract

This article comprehensively examines the death penalty, its ethical, legal, and societal dimensions, with a focus on Nigeria. Despite its longstanding use as a punitive measure for capital offences, empirical evidence and global trends increasingly challenge its efficacy as a deterrent for achieving retributive justice. While the death penalty retains constitutional legitimacy in Nigeria, its implementation is hindered by systemic inefficiencies, including an unofficial moratorium resulting from executive reluctance to authorise executions. This has led to the indefinite detention of death row inmates, raising significant ethical and human rights concerns, including psychological trauma and violations of international legal standards. By situating the Nigerian experience within a global context of declining support for the death penalty, the article argues for its abolition. It posits that life imprisonment without the possibility of parole, coupled with targeted reforms to address the root causes of crime, offers a more humane and effective alternative.

Keywords: Death penalty, death row, abolition movement, unofficial moratorium

1.1 Introduction

The death penalty, also known as capital punishment, has been a topic of intense debate and controversy throughout history and in the field of criminal justice. It is a form of punishment that involves the execution of a person who has been

convicted of a capital offence. It can also be described as a form of criminal punishment that takes the defendant's life as a consequence for the defendant's crime.¹ In other words, the State deliberately kills a citizen for an offence of which he has been found guilty by a court of competent jurisdiction.² Capital punishment takes various forms, including lethal injection, electrocution, also known as the electric chair, hanging, and firing squad. These fatal punishments are reserved for capital offences as prescribed by various laws. Mandatory death sentences are also meted out on non-heinous crimes such as armed robbery, adultery and sodomy under Islamic law, which is predominantly practised in the northern parts of Nigeria.³

Arguments for and against this ultimate punishment continue to rage about the constitutionality of this punishment and how it disregards the sanctity of life for a citizen. Supporters of the death penalty argue that it deters crime and provides ultimate justice for crime victims, particularly murder victims.⁴ Opponents counter that argument, stating that it is an immoral and costly practice that is particularly vulnerable to racial bias, which also carries the risk of carrying out a wrongful execution.⁵ Most leading criminologists believe that the death penalty

* Nengi A. Banigo-Abah, LLB Unizik Awka B.L, LLM (University of Birmingham, England UK) Lecturer, Faculty of Law University of Port Harcourt, Rivers State, Nigeria. Email: nengi.banigo@uniport.edu.ng;

** Dr Legborsi Tony-Francis, Lecturer, Dept of public Law Faculty of Law, University of Port Harcourt, Port-Harcourt, Rivers State. Email tlegbor@gmail.com 08034365370

¹ Cornell Law School, Capital Punishment < https://www.law.cornell.edu/wex/capital_punishment > accessed 7 January 2025

² D. Badaiki, 'Singing Nunc Dimitis to Death Penalty' [2004] (2) (1) *Benin Journal of Public Law*; P.1

³ Section 402 of the Criminal Code; Section 3 Robbery and Firearms (Special Provisions) Act Cap. 398 LFN 1999

⁴ I. A. Adeniyi, 'A Reappraisal of Death Penalty in Nigeria' (2024) 27 *The Jurist Journal of Law, University of Ilorin*; 1-10

⁵ *Ibid*

has little to no deterrent effect on murder rates based on empirical research.⁶ Again, research shows that 88% of criminologists surveyed said they do not believe the death penalty deters homicide, while only 2.5% of victims' family members reported achieving closure through capital punishment.⁷ Indicating that capital punishment lacks strong support as a superior deterrent for murder and other serious offences.

This article aims to explore the ethical, legal and social implications surrounding the death penalty. By examining various perspectives, it seeks to provide an analysis of this contentious issue and considers whether it is still fit for purpose. A brief history of the death penalty is undertaken in the first part. An overview of the death penalty in Nigeria is highlighted in the second part. In the third part, a critical analysis of the controversies surrounding this issue in Nigeria is undertaken to arrive at a conclusion that the purpose of ultimate punishment is not achieved in practice through the reluctance of Governors to sign death warrants for inmates on death row. Consequently, the death penalty is no longer fit for purpose.

1.2 Historical Development of the Death Penalty

The origins of the death penalty are rooted in antiquity, and it is not possible to pinpoint a specific date as the origin of the death penalty. Anthropologists have claimed that the drawings at Valladolid by pre-historic cave dwellers display some motif of an execution.⁸ In ancient Greece, the existence of the death penalty is revealed by the execution of Socrates, a great thinker of fourth-century Athens.

⁶ M. Radelet & T. Lacoock, 'Do Executions Lower Homicide Rates? The Views of Leading Criminologists' [2009] (99) *Journal of Criminal Law & Criminology Northwestern University*, 489

⁷ *Ibid*

⁸ R. Zaller, 'The Death of Socrates and Capital Punishment Today' *Schuylkill Valley Journal Online* <<http://www.svjlit.com/features/the-death-of-socrates-and-capital-punishment-today-by-robert-zaller>> accessed 8 January 2025

Socrates was executed for his philosophical postulations that were diametrically opposed to the prevailing religious and customary beliefs in Greece at that period.⁹

The origins of the death penalty are also traced to the Bible where offenders among the Hebrews were put to death for offences like physical assault, stealing, murder, and verbal abuse of one's parent.¹⁰ However, the most traceable biblical history that gives a positive nod to the practice of the death penalty is found in Genesis 9:6 which states that "whoever shall shed man's blood, his blood shall be shed, for man was made to the image of God".¹¹ The prevalent Mosaic Laws of that era supported the adoption of the death penalty with provisions of the law such as 'an eye for an eye, tooth for tooth, hand for hand, foot for foot'.¹² The underpinnings of this scripture seem to be seen in another part, where the scripture tells us that the shedding of another's blood defiles the land and that the land can only be cleaned of the blood that was shed by slaying the murderer.¹³ This means that for the heinous crime of murder, the earth is polluted and can only be cleansed by the killing and the blood of the killer himself. The Hebraic thinking of that period believed that eliminating perpetrators of acts that could harm societal peace was necessary. Similarly, in the Quran, it is provided that 'whoever sheds man's blood, by man shall his blood be shed: for in the image of God made the man'.¹⁴

The death penalty was first enacted in the Lex talionis of the Code of Hammurabi.¹⁵ Various crimes such as magic, violation of the Sabbath, blasphemy, adultery, homosexuality, bestiality, incest, and rape were punishable

⁹ *Ibid*

¹⁰ Exodus Chapter 21: 12-36

¹¹ Genesis 9:6

¹² Exodus 21:24

¹³ Genesis 35: 33

¹⁴ Sunna 5:36

¹⁵ Death Penalty Information Center, 'History of the Death Penalty'
<<https://deathpenaltyinfo.org/curriculum/high-school/about-the-death-penalty/history-of-the-death-penalty>> accessed 9 January 2025

by death.¹⁶ Different methods of execution were used, including crucifixion, drowning, beating to death, burning alive, and impalement.¹⁷

In the Middle Ages, the death penalty was popular and characterized by particular brutality. Its legitimacy was defended by many of the great thinkers of the Renaissance and the Reformation.¹⁸ Britain in the 18th Century generously applied the death penalty during the reign of King Henry VII, with a total number of 222 capital crimes, as many as 72,000 people were estimated to have been executed.¹⁹

After the Second World War, many European countries signed the Universal Declaration of Human Rights and other subsequent human rights treaties, and abandoned or competently restricted the use of the death penalty.²⁰ However, on the other side of the Atlantic in the United States of America, the death penalty was retained and is still in use today, although with established limitations. Thereupon, in 1977 the U.S Supreme Court held that the punishment for death in a rape case which did not result in the victim being killed was unconstitutional punishment.²¹

Again, in 1986, the US Supreme Court banned the execution of mentally ill or insane persons.²² Yet again, in 2005, the US Supreme Court prohibited the use of

¹⁶ *Ibid*

¹⁷ D. Aisekhaghe, 'The Death Penalty as a Penological Policy under Nigerian Criminal Law: An Appraisal' (2007) SSRN
<<https://deliverypdf.ssrn.com/delivery.php?ID=389082074026094010112107109009080087049011003078061021028121006100004066112101106025033007120040011005124117008127095069109097012091022050034005087099090126011070127068081076078016112086072004084088120111001113114018029112003122123089008076027102067078&EXT=pdf&INDEX=TRUE>> accessed 9 January 2025

¹⁸ *Ibid*

¹⁹ *Ibid*

²⁰ Death Penalty Information Center, (n 18)

²¹ *Coker v Georgia* (433 US 584)

²² *Ford v Wainwright* (477 US 399)

the death penalty for juveniles.²³ That is for offenders who committed their crimes before they turned 18 years of age, they will no longer be given capital punishment. In their view, punishing a child with the death penalty amounted to cruel and unusual punishment and was therefore barred by the Constitution.²⁴

1.3 Historical Development of the Death Penalty in Nigeria

The death penalty has a long history in Nigeria; research shows that the death penalty has been practiced for over fifty (50) years and many citizens favour its retention.²⁵ Traditionally, it was customary to eliminate offenders from society by way of the death penalty.²⁶ Offences such as murder and witchcraft, adultery and profaning the gods attracted capital punishment.²⁷ However, the customary use of the death penalty was abolished by Section 21 (10) of the 1960 Constitution which is reaffirmed in Section 36 (12) of the 1999 Constitution (as amended). The provision provides thus:

“... a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law ... a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.”

During the colonial era, when customary practices were abolished and criminal codes were introduced by the British in the late 19th century, the death penalty was used to punish offences such as murder, treason, and piracy.²⁸ The death

²³ *Roper v Simmons* [03-633], 543 U.S. 551 (2005)

²⁴ Death Penalty Information Center, (n 18)

²⁵ N. E. Abangwu, ‘Death Penalty in Nigeria: To Be or Not To Be: The Controversy Continues’ [2013] 3 (3) *Arabian Journal of Business and Management Review* (OMAN Chapter) <[https://arabianjbmr.com/pdfs/OM_VOL_3_\(3\)/3.pdf](https://arabianjbmr.com/pdfs/OM_VOL_3_(3)/3.pdf)> accessed 9 January 2025

²⁶ O. Duru, ‘The Constitutionality of Death Penalty Under Nigerian Law’ *SSRN Electronic Journal* (2012) <https://www.academia.edu/5185442/the_constitutionality_of_death_penalty_under_nigerian_law> accessed 9 January 2025.

²⁷ *Ibid*

²⁸ O. Duru (n 33)

penalty was also used to suppress dissent and opposition to colonial rule. After Nigeria gained independence in 1960, the death penalty remained in place as a form of punishment. In 1975, the military government of General Murtala Mohammed reintroduced the death penalty for offences such as armed robbery, drug trafficking, and treason. Since then, the death penalty has remained a part of Nigeria's legal system, with periodic reviews and amendments to the laws governing its use.²⁹

Most importantly, the death penalty has its legal backing in the Constitution and in the very section which guarantees a citizen's right to life. Section 33(1) of the Constitution³⁰ provides that a person has the right to life and such life shall not be intentionally deprived except when such a person has committed a crime that attracts capital punishment as pronounced by a court of competent jurisdiction. This indicates that the death penalty is a legal form of punishment for offences for which an accused person has been found guilty.

In like manner, a citizen's right to life can be intentionally deprived if he is found guilty of the following offences: treason and treasonable felony,³¹ instigating an invasion of Nigeria,³² Murder or Homicide,³³ and Armed Robbery.³⁴ Under the Penal Code, Culpable homicide,³⁵ aiding the suicide of a child or lunatic,³⁶

²⁹ *Ibid*

³⁰ CFRN 1999

³¹ S. 37 Criminal Code Act, Cap 38 LFN 2004

³² S.38 Criminal Code Act, Cap 38 LFN 2004

³³ S. 319 Criminal Code Act, Cap 38 LFN 2004

³⁴ S. 402(2) Criminal Code Act, Cap 38 LFN 2004

³⁵ S. 221 Penal Code Act, Cap 53 LFN 2004

³⁶ S. 227

offences against the state,³⁷ fabrication of evidence for the conviction of an innocent person,³⁸ adultery³⁹ and blasphemy can grant a punishment of death.⁴⁰

Now, the punishment of death is not a blanket provision for all offenders; there are certain categories of offenders who are exempted from the sentence of death in our jurisdiction. They include Juvenile offenders, by virtue of Section 368(3) of the Criminal Procedure Act.⁴¹ The provision states that if a court convicts an offender of an offence punishable by death but determines that the offender was under the age of seventeen at the time the offence was committed, a death sentence shall neither be pronounced nor recorded. Instead, the court is required to order the detention of the convict at the discretion of the President or the State Governor, depending on whether the offence falls under federal or state jurisdiction.⁴² Furthermore, Nigeria has an international obligation as a signatory to the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Rights of the Child not to impose capital punishment on children. The definition of who is a child is put forward by the Child Rights Act, as a person under the age of 18 years.⁴³

Again, Pregnant women are exempted from capital punishment by the provisions of Section 368 (2) of the Criminal Procedure Act.⁴⁴ This exemption is not without controversy. The question as to whether pregnancy should be at the time of the commission of the offence, conviction or execution of the sentence of death is debatable. However, the view that when a woman is convicted and sentenced to

³⁷ *Ibid* S. 302

³⁸ *Ibid* S. 411

³⁹ *Ibid* S. 155(2)

⁴⁰ *Ibid* S.126

⁴¹ CPA Cap C.41, LFN 2004

⁴² This was the purpose of the court's decision in the case of *Modupe v State* (1988) 4NWLR (Pt. 87)

⁴³ S. 277 CRA 2003

⁴⁴ Cap C.41 LFN 2004

death, but before the execution of the sentence of death, she is found to be pregnant, the sentence of death should be commuted to life imprisonment gains more acceptance.⁴⁵ Another category of exempted offenders is mentally ill or insane offenders, who are not criminally liable for their acts or omissions due to lack of mental capacity.⁴⁶ Equally exempted are women with nursing children under international treaty obligations.

The use of the maximum punishment of death is currently being expanded to cover the growing national epidemic of kidnapping.⁴⁷ According to the act, a sentence of death would lie at the instance of anyone whose kidnapping activities lead to the death of the kidnapped victim.⁴⁸ It is estimated that there are over 400 abductions a week in the country with victims being mostly women and children.⁴⁹ Between July 2022 and June 2023, analysts feared that 3,600 people were kidnapped.⁵⁰ The truth is that the number might be far higher than is recorded. The prevalence of the offence of kidnapping in the country has led about 15 states such as Imo, Osun, Gombe, Kano, Katsina, and Nasarawa to modify their criminal laws to include capital punishment for the offence of kidnapping.⁵¹ In recent years, there has been a significant increase in the number of death sentences handed down by Nigerian courts, with many of these sentences being the result of the government's crackdown on terrorism and insurgency.

Although, there have been concerns about the fairness of the judicial system in Nigeria, particularly in cases involving the death penalty. With reports of

⁴⁵ N. E. Abangwu, (n 32)

⁴⁶ S. 28 Criminal Code Act Cap C.38, LFN 2004

⁴⁷ S. 30 (1) Nigerian Abduction Act 2017

⁴⁸ *Ibid*

⁴⁹ DW In Focus, 'Kidnapping in Nigeria' <[Kidnapping in Nigeria – DW – 03/10/2024](#)> accessed 9 January 2025.

⁵⁰ *Ibid*

⁵¹ R. Egbe, 'Kidnapping: Is Death Penalty the Answer? (The Nation, March 28, 2017) <https://thenationonline.ng.net/kidnapping-death-penalty-answer/#google_vignette> accessed 8 August 2024.

wrongful convictions, inadequate legal representation, and torture of suspects to extract confessions.⁵² These issues have led to calls for an official moratorium on the use of the death penalty in Nigeria. A moratorium will secure a temporary suspension on the use of death sentences by the courts for capital offences. An official moratorium will ensure fundamental fairness in their view and minimize the risk of innocent people being executed.⁵³ These recommendations make a strong point, which is agreed with, but they have fallen on deaf ears, and our courts are still handing down death sentences as a legal form of punishment.

The existence of the death penalty in almost all nations and legal systems has been brought to the limelight by the abolition movements of the nineteenth, twentieth, and twenty-first centuries. The United Nations Human Rights Commission in 1999 passed a resolution calling on countries worldwide to support the moratorium on the death penalty.⁵⁴ In its resolution, it called on countries to abolish and restrict the use of the death penalty by not imposing it on juveniles and reducing the number of offences for which the result is capital punishment.⁵⁵

Globally, statistics show that a total of 144 countries have listened to the call of the international community and abolished the death penalty in law and practice, of which number 112 countries have abolished its use for all crimes.⁵⁶ That is, in these countries, their laws do not provide for the death penalty for any crime whatsoever. At the same time, there are a total of 9 countries whose laws provide

⁵² OHCHR UPR, Nigeria: The Death Penalty Submitted by the Human Rights Law' <[JS18 UPR31_NGA_E_Main \(2\).pdf](#)> accessed 9 January 2025

⁵³ *Ibid*

⁵⁴ United Nations, Commission on Human Rights Adopts Resolutions on Effects of Impunity, Globalization and Death Penalty on Human Rights' *United Nations Meetings Coverage and Press Releases* (28 April 1999) <<https://press.un.org/en/1999/19990428.hrcn938.html>> accessed 10 January 2025

⁵⁵ *Ibid*

⁵⁶ Death Penalty Information Center, 'Abolitionist and Retentionist Countries' <<https://deathpenaltyinfo.org/policy-issues/international/abolitionist-and-retentionist-countries>> accessed 10 January 2025.

for the death penalty only for exceptional crimes, such as crimes under military law or crimes under exceptional circumstances.⁵⁷ Then, 26 countries have abolished the use of the death penalty in practice, that is, countries which retain the death penalty for ordinary crimes such as murder but in practice have not executed anyone in the past 10 years.⁵⁸ Subsequently, there are retention countries; these are countries that still retain in law and practice the death penalty. A total of 55 countries, which include the world's two largest populations, India and China.

The prevalent use of the death sentence differs across countries, with some nations actively employing it while others have abolished or suspended its use. Reports show that death sentences and executions take place in five major Countries. China is said to be the world's leading executioner, with its data on the death penalty classified as State secret, followed by Iran, Saudi Arabia, Egypt and the USA.⁵⁹ With 90% of reported executions happening in just three countries, Iran, Saudi Arabia and Egypt, excluding China, which has the world's largest population.⁶⁰ Many more people live in countries where the death penalty is still legally practiced.

Again, the use of capital punishment is reported to be on a significant increase now from past years. For instance, executions are said to have gone up in two countries that routinely execute their citizens, Iran recorded executions went up to 576 in the year 2022 from 314 in the year 2021, an increase of 83%.⁶¹ Equally, in Saudi Arabia, the number of executions is said to have tripled from 65

⁵⁷ *Ibid*

⁵⁸ *Ibid*

⁵⁹ Amnesty International, 'Death Penalty' *Amnesty International* (May 2023) <<https://www.amnesty.org/en/what-we-do/death-penalty>> accessed 8 January 2025

⁶⁰ *Ibid*

⁶¹ Amnesty International Global Report, 'Death Sentences and Executions 2022' Amnesty International (London, 2023) <<https://www.amnesty.org/en/documents/act50/6548/2023/en/>> accessed 8 January 2025

executions carried out in 2021 to 196 executions in 2022, the highest recorded number of executions in the last 30 years.⁶²

On the other hand, in Nigeria, the number of inmates being sentenced to death continues to grow despite the reluctance of the State to carry out these executions. Statistics show that as of December 2022, a total number of 3166 inmates are currently on death row throughout the country, with only 62 of them being women, however, executions have remained a rarity.⁶³ Records show that the last execution was carried out 7 years ago in 2016.⁶⁴ The State Governors of the various states are saddled with the legal responsibility of signing the death warrants of inmates who have been sentenced to die in the country which they rarely do. The endless wait for execution that Nigerian death row inmates experience has ethical implications. In effect, the indefinite detention of death row inmates has been termed unjustifiable and constitutes torture, cruel, inhuman and degrading punishment.⁶⁵

Now, although Nigeria is included in this list of 55 retention countries, in practice, Nigeria seems to be leaning more towards the abolitionist countries. To illustrate, the last executions in Nigeria took place in 2016 when three men were hanged for murder and armed robbery.⁶⁶ Before that, there was a significant gap between the previous executions occurring in 2013 and the last known execution in 2006.⁶⁷ And so the unending debate remains: whether the state should kill its citizens or

⁶² *Ibid*

⁶³ I. Ige, 'Death Penalty: Why Nigeria Can no Longer Sit on the Fence-Lawyers' *Vanguard* (January 26 2023) <<https://www.vanguardngr.com/2023/01/death-penalty-why-nigeria-can-no-longer-sit-on-the-fence-lawyers/#:~:text=The%20rights%20group%20reported%20that,sub%2DSaharan%20Africa%20that%20year.>> accessed 8 January 2025.

⁶⁴ *Ibid*

⁶⁵ *Ibid*

⁶⁶ I. Ige (n 63)

⁶⁷ Amnesty International, 'The Death Penalty in Nigeria' (21 May 2004) <[Nigeria: The death penalty in Nigeria \(amnesty.org\)](https://www.amnesty.org/en/documents/AFR12/001/2004/01/)> accessed 10 January 2025

whether the killing or not killing of an inmate on death row amounts to torture, inhuman and degrading treatment and therefore unconstitutional. This debate will now be evaluated below.

1.4 Controversies Surrounding the Death Penalty in Nigeria

One of the main controversies surrounding the death penalty in Nigeria is its effectiveness as a deterrent to crime. Advocates for the death penalty in Nigeria often argue that it serves as a deterrent to violent crimes.⁶⁸ Additionally, some proponents view capital punishment as a necessary tool for retributive justice, ensuring that perpetrators of heinous crimes receive penalties commensurate with their actions.⁶⁹ Although they suggest that the certainty of severe punishment can dissuade potential offenders, thereby enhancing public safety, there is little evidence to suggest that the death penalty is an effective crime deterrent, and many experts argue that it is not an effective way to reduce crime rates.⁷⁰

Proponents of this school of thought cite the deterrence theory of punishment, which posits that individuals are rational actors who weigh the potential costs and benefits of their actions before engaging in criminal behaviour.⁷¹ They put forward the idea that the likelihood of an individual committing a crime can be significantly reduced by implementing a system of punishment that is severe, certain and swift.⁷² In like manner, the deterrence theory emphasises the importance of individual rationality in decision-making. It assumes that individuals are capable of assessing the risks and rewards associated with their

⁶⁸ C. Okoh & M. Nwosu, 'Capital Punishment and Crime Control in Nigeria: A Criminological Perspective' [2019] 6 (2) *Nigerian Journal of Law and Society* p. 89-102

⁶⁹ *Ibid*

⁷⁰ K.S. Adebisi & D. N. Olanrewaju, 'An Appraisal of Kidnapping and Death Penalty Imperative in Nigeria' [2020] 25 (9) *Journal of Humanities and Social Science* p. 58-65
<<https://iosrjournals.org/iosr-jhss/papers/Vol.25-Issue9/Series-10/H2509105865.pdf>>
accessed 15 January 2025

⁷¹ C. Beccaria, *On Crime and Punishments* (Hackett Publishing Company, 1986)

⁷² *Ibid*

actions and will choose to avoid those that carry significant negative consequences. However, evaluating the effectiveness of the deterrence theory in any given society is challenging. This is because, while it is difficult to quantify the number of crimes prevented due to the fear of severe punishment, the deterrence theory may not adequately address the social and economic factors that contribute to the commission of a crime. It primarily focuses on individual choices and may overlook other systemic issues.

Moreover, empirical evidence questioning the deterrent effect of the death penalty adds to the controversy. Studies have failed to conclusively demonstrate that capital punishment significantly reduces crime rates compared to other forms of punishment.⁷³ In Nigeria, where systemic issues such as poverty, unemployment, and inadequate law enforcement contribute to high crime rates, critics argue that addressing these root causes would be more effective than resorting to capital punishment.⁷⁴

On the other hand, Critics of the death penalty in Nigeria highlight numerous concerns. One prominent issue is the potential for judicial errors and miscarriages of justice, given the well-documented challenges within the Nigerian judicial system, including corruption, inadequate legal representation, and prolonged pretrial detention.⁷⁵ Amnesty International has documented cases where individuals on death row lacked access to competent legal counsel, raising doubts about the fairness of trials leading to capital sentences.⁷⁶

⁷³ T. O. Nwokocha, 'The Deterrent Effect of Capital Punishment in Nigeria: A Myth or Reality?' [2020] 64 (1) *Journal of African Law* P. 123-138

⁷⁴ *Ibid*

⁷⁵ O. Agbakoba & J. Ezeilo, 'Judicial Reforms and the Administration of Justice in Nigeria' (2021) Lagos Legal Defence and Assistance Project (LEDAP)

⁷⁶ Amnesty International, 'Death Sentences and Executions 2022'

<https://www.amnesty.org/en/documents/act50/6548/2023/en/> accessed January 15 2025

Another significant controversy is the violation of human rights. International human rights organizations, including the United Nations, have consistently called for the abolition of the death penalty, viewing it as a form of cruel, inhuman, and degrading treatment. Nigeria's continued use of capital punishment has drawn criticism for contravening these global human rights norms, particularly in light of the country's commitments under international treaties such as the International Covenant on Civil and Political Rights (ICCPR). That notwithstanding, the death penalty also raises ethical questions regarding its disproportionate application. Reports suggest that marginalized groups, including the poor and uneducated, are overrepresented on death row in Nigeria, reflecting broader systemic inequities.⁷⁷

In addition, there are critical concerns about the potential of the death penalty to be used as a political tool to suppress dissent and opposition. The fear that the death penalty may be weaponized during periods of authoritarian rule to eliminate political rivals and stifle dissenting voices is a primary concern. For instance, under Nigeria's military regimes, political opponents were often charged with offences such as treason, which carried the death penalty, and were subsequently executed after trials that lacked transparency and fairness. The execution of Ken Saro-Wiwa and eight other Ogoni activists in 1995 is a prominent example. These individuals were convicted of murder charges under questionable circumstances, widely seen as politically motivated to quell environmental activism and opposition to the exploitation of the Niger Delta.⁷⁸ To address these concerns, reforms to safeguard against the misuse of the death penalty for political purposes cannot be over-emphasized.

⁷⁷ O. Agbakoba & J. Ezeilo, (n 75)

⁷⁸ Human Rights Watch, 'The Ogoni Crisis: A Case Study of Military Repression in Southeastern Nigeria' (New York, 1995)

1.5 Ethical Implications of Indefinite Detention of Death Row Inmates

The recent disclosure by the spokesperson for the Nigerian Correctional Service indicates that a minimum of Three Thousand Five Hundred and Ninety (3590) inmates are on death row across Nigerian Correctional Service; three thousand five hundred and seventeen (3517) inmates are said to be males while seventy-three (73) of that number are females.⁷⁹ The trepidation is that these numbers could be higher. Meanwhile, executions have not been carried out since 2016, even though the apex court has concluded their cases.⁸⁰

Reasons for the delay in executions range from bureaucratic bottlenecks of the judicial system to a shortage of hangmen to a lack of political will on the part of the executive governors to sign the death warrant since they have the ultimate power to confirm, commute or ameliorate death sentences of inmates.⁸¹ According to Section 371 of the Criminal Procedure Act, the ultimate authority to carry out a death sentence does not rest solely with the judge who presided over the case and pronounced the sentence. Under this provision, the mere pronouncement of a death sentence by the court is insufficient to authorize the execution of the convicted individual. The judge is required to promptly submit a report, including any recommendations regarding the conviction, to the Minister or Commissioner of Justice at the federal or state level.

The Minister or Commissioner of Justice, who often concurrently serves as the Attorney General, reviews the report and forwards it to the Advisory Council on the Prerogative of Mercy for further consideration. The Council, in turn, provides its recommendations to the Attorney General, who advises the President or

⁷⁹ Vanguard News, '3590 Inmates on Death Row in Nigeria-Prisons Service' (September 2024, Vanguard) <<https://www.vanguardngr.com/2024/09/3590-inmates-on-death-row-in-nigeria-prisons-service/>> accessed 16 January 2025.

⁸⁰ This Day Editorial, 'Death Row Convicts and Matters Arising' (September 2024, This Day) <<https://www.thisdaylive.com/index.php/2024/09/24/death-row-convicts-and-matters-arising/>> accessed 16 January 2025.

⁸¹ *Ibid*

Governor, as appropriate, on whether the convicted individual should be pardoned, executed, or have their death sentence commuted to life imprisonment. Perhaps it is worthy of note that the last executions in Nigeria were signed by the then Edo State Governor Adams Oshiomhole, which was the execution of three men for the offence of armed robbery.

The prolonged detention of death row inmates for whatever justifications raise significant ethical, legal, and humanitarian concerns. The indefinite wait for execution not only undermines the principles of justice but also subjects inmates to conditions that have been widely recognized as cruel, inhuman, and degrading. Prolonged solitude, just waiting to die at the hands of the state year after year with no definite time, must be gravely detrimental to the psychology of death row inmates.⁸² This state of perpetual anxiety is tantamount to psychological torture, as recognized by international human rights bodies such as the United Nations Human Rights Committee (UNHRC).⁸³ The emotional suffering endured by death row inmates violates their inherent dignity and contravenes Nigeria's obligations under international human rights law, including the United Nations Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (UNCAT).⁸⁴

The fact that Governors are given the ultimate power of deciding when and whether an inmate on death row dies or lives indicates a Governor's sovereign

⁸² *Ibid*

⁸³ United Nations Human Rights Office of the High Commissioner, 'Death Penalty Incompatible with Right to Life' (January 2024) < <https://www.ohchr.org/en/stories/2024/01/death-penalty-incompatible-right-life#:~:text=As%20part%20of%20their%20commitment,or%20Degrading%20Treatment%20or%20Punishment>> accessed 16 January 2025.

⁸⁴ Fiacat, 'The Death Penalty and the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (October 2023) < <https://www.fiacat.org/en/publications-en/reports/thematic-reports/3003-the-death-penalty-and-the-prohibition-of-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment#:~:text=The%20signatory%20organizations%20are%20convinced,the%20absolute%20prohibition%20of%20torture.>> accessed 16 January 2025.

power over the life and death of inmates. A serious responsibility as this requires the utmost dedication to duty and not allowing inmates to indefinitely remain in custody, defeating the purpose of the law and making the death penalty a ridicule in the eyes of the law. The halt on executions for the last 7 years has impliedly put in place in our judicial system an unofficial moratorium on executions, which is alien to our jurisprudence. Life imprisonment for certain serious offences currently exists in our laws for offences such as rape, drug trafficking, kidnapping etc, and it is not the intention of the law to make the death penalty offences become offences of life imprisonment without the possibility of parole.

Another Jurisprudential issue is that an individual sentenced to death following a lawful conviction but whose execution is indefinitely deferred effectively endures a separate, disproportionate and arguably more severe punishment than the prescribed penalty of death. Such a scenario conflicts with the fundamental legal principle that the death penalty for capital offences is not discretionary but mandatory. Consequently, the state also incurs significant substantial expenditures of taxpayers' money required to sustain inmates on death row over a long period of time, people who should have already been executed.⁸⁵

The death penalty is intended to serve several purposes such as deterrence, retribution and the administration of justice for heinous crimes theoretically. It is argued that by imposing the ultimate punishment for the most severe crimes, the death penalty reassures the public that justice is being served. However, the effectiveness and justification of the death penalty in light of the fact that no executions have been carried out since 2016 appears ineffective for the deterrence purpose of the death penalty. For the retributive purpose, the long delays in execution undermine the principle of timely justice, leaving both victims' families

⁸⁵ F. Oseya, 'Governors and Death Sentence: a Revisit' <<https://nigerianlawguru.com/wp-content/uploads/2024/11/governors-and-death-sentence-a-re-visit.pdf>> accessed 21 January 2025.

and inmates in prolonged uncertainty. The indefinite detention of death row inmates reflects systemic inefficiencies and erodes trust in the judicial process, therefore making the death penalty unfit for purpose.

1.6 Conclusion

This paper has endeavoured to examine the issues surrounding the death penalty in Nigeria. It does so first by tracing the root of the death penalty concept, which is entrenched in antiquity from prehistoric times to recent reforms of how it is practised in modern times. An overview of how it is practised in Nigeria reveals its long and continued use, which gains a lot of support for retention in cases of serious crimes of murder and new crimes of kidnapping that led to the death of the kidnapped victim. Furthermore, a synopsis of the controversies surrounding the issues of the death penalty is equally undertaken to arrive at the ethical implications of the courts' continued use of the death sentence and the non-execution of inmates on death row. This raises a lot of jurisprudential issues, such as an unofficial moratorium that is unknown to our legal jurisprudence and keeps inmates on death row for an uncertain period. Consequently, death row inmates are subjected to torture, inhumane and cruel punishment.

In conclusion, the death penalty is a highly debated topic in the field of criminal justice. While supporters argue that it deters crime and provides ultimate justice for crime victims, opponents counter that it is an immoral and costly practice that is particularly vulnerable to racial bias and carries the risk of carrying out a wrongful execution. The evidence suggests that the death penalty does not deter crime and is not an effective form of punishment. The idea that the death penalty in Nigeria is no longer fit for its slated purposes for the following reasons is put forward; Its' failure to deter crime, the prolonged unofficial moratorium on executions, and the inherent injustices in its application undermine its legitimacy. Moreover, the ethical, legal, and human rights concerns surrounding the death penalty highlight the urgent need for more criminal justice reform. Since life

imprisonment without the possibility of parole, coupled with efforts to address the root causes of crime, would provide a more humane and effective alternative to the death penalty. It is therefore suggested for recommendation that the Nigerian constitution be amended to consider abolishing the death penalty and aligning its justice system with global human rights standards of a moratorium on the death penalty.