

**CAPITAL PUNISHMENT IN NIGERIA: HUMAN RIGHTS PERSPECTIVE AND
CONSTITUTIONAL CHALLENGES**

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,
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CERTIFICATION

I, **Leonard Ebalehita AREBOJIE**, with Matriculation Number **LAW2002837**, hereby certify that apart from references to other person's work which have been duly acknowledged, this entire work is a product of my research, and this project has neither in part or in whole been presented for another degree elsewhere.

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APPROVAL

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DEDICATION

This project is dedicated to God Almighty, and my parents for their prayers, love and support.

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I wish to express my immense gratitude to God Almighty, my pillar of strength, the beacon of wisdom, and the embodiment of unconditional love. For the grace to start and complete this project and for His assistance throughout the duration of this course.

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TABLE OF STATUTES

NATIONAL\DOMESTIC INSTRUMENTS

Administration of Criminal Justice Act, 2015

Child's Rights Act, 2003, Cap. C50, Laws of the Federation of Nigeria

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

Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004

Edo State Kidnapping Prohibition (amendment) Law 2025

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Amina Lawal v. State, Shari'a C.A. of Katsina, Nigeria (Aug. 21, 2002)

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LIST OF ABBREVIATIONS

ACHPR African Charter on Human and Peoples' Rights

ACJA Administration of Criminal Justice Act

FCT Federal Capital Territory

ICCPR International Covenant on Civil and Political Rights

LEDAP Legal Defence and Assistance Project

NCS Nigerian Correctional Service

NGOs Non governmental organizations

NHRC National Human Rights Commission

NWLR Nigerian Weekly Law Reports

SCNLR Supreme Court of Nigeria Law Reports

SPCs Sharia Penal Codes

UDHR Universal Declaration of Human Rights

UK United Kingdom

US(A) United States (of America)

TABLE OF CONTENT

Title page	-	-	-	-	-	-	-	-	-	-	ii
Certification	-	-	-	-	-	-	-	-	-	-	iii
Approval	-	-	-	-	-	-	-	-	-	-	iv
Dedication	-	-	-	-	-	-	-	-	-	-	v
Acknowledgment	-	-	-	-	-	-	-	-	-	-	vi
Table of Statutes	-	-	-	-	-	-	-	-	-	-	viii
Table of Cases	-	-	-	-	-	-	-	-	-	-	ix
List of Abbreviations	-	-	-	-	-	-	-	-	-	-	x
Table of Content	-	-	-	-	-	-	-	-	-	-	xi
Abstract	-	-	-	-	-	-	-	-	-	-	xiv
CHAPTER ONE: INTRODUCTION	-	-	-	-	-	-	-	-	-	-	1
1.1 Background to the Study	-	-	-	-	-	-	-	-	-	-	1
1.2 Statement of the Problem	-	-	-	-	-	-	-	-	-	-	3
1.3 Aim and Objectives of the Study	-	-	-	-	-	-	-	-	-	-	5
1.4 Scope and Limitations of the Study	-	-	-	-	-	-	-	-	-	-	6
1.5 Significance of the Study	-	-	-	-	-	-	-	-	-	-	8
1.6 Research Methodology	-	-	-	-	-	-	-	-	-	-	9
1.7 Conclusion	-	-	-	-	-	-	-	-	-	-	9

CHAPTER TWO: CAPITAL PUNISHMENT IN NIGERIA: HUMAN RIGHTS PERSPECTIVES AND CONSTITUTIONAL CHALLENGES 11

2.1	Conceptual Clarifications	-	-	-	-	-	-	-	11
	2.1.1	Definitions of Terms	-	-	-	-	-	-	11
2.2	Theoretical Framework	-	-	-	-	-	-	-	17
	2.2.1	Historical Foundation	-	-	-	-	-	-	17
2.3	Literature Review	-	-	-	-	-	-	-	20
2.4	Conclusion	-	-	-	-	-	-	-	29

CHAPTER THREE: LEGAL AND INSTITUTIONAL FRAMEWORKS FOR CAPITAL PUNISHMENT IN NIGERIA - - 31

		-	-	-					
3.1	Introduction	-	-	-	-	-	-	-	31
3.2	Legal Frameworks for Capital Punishment	-	-	-	-	-	-	-	31
	3.2.1	Constitutional Basis	-	-	-	-	-	-	31
	3.2.2	Statutory Offenses and Laws in Nigeria	-	-	-	-	-	-	33
3.3	Execution Procedure and Prescribed Methods				-	-	-	-	39
3.4	International and Human Rights Dimension	-	-	-	-	-	-	-	41
3.5	Institutional Frameworks for Capital Punishment	-	-	-	-	-	-	-	42
	3.5.1	The Role of the Judiciary and Courts	-	-	-	-	-	-	43
	3.5.2	Law Enforcement, Executive Power and Custodial Institutions							44
	3.5.3	Legislative Oversight and Reform	-	-	-	-	-	-	46
	3.5.4	Human Rights Bodies and Non-Governmental Organizations							47
	3.5.5	Key Issues and Observations in the Application of Capital Punishment							48

CHAPTER FOUR: THE EFFECT OF CAPITAL PUNISHMENT IN NIGERIA AND COMPARATIVE ANALYSIS - - 50

4.1	Introduction	-	-	-	-	-	-	-	50
4.2	Effects of Capital Punishment In Nigeria	-	-	-	-	-	-	-	51

4.2.1	Human Rights Effects -	-	-	-	-	-	-	-	51
4.2.2	Psychological Effects and Secondary Victim	-	-	-	-	-	-	-	51
4.2.3	Deterrence and Criminological Impact	-	-	-	-	-	-	-	52
4.3	Comparative Analysis	-	-	-	-	-	-	-	53
4.3.1	Capital Offenses and Capital Punishment in the United States	-	-	-	-	-	-	-	53
4.3.2	Capital Punishment in the United Kingdom	-	-	-	-	-	-	-	60
4.3.3	Capital Punishment in Nigeria: Retentionist Laws and the Reality of Moratorium	-	-	-	-	-	-	-	63
4.3.4	Comparing the Nigerian Current State of Capital Punishment with International Jurisdictions	-	-	-	-	-	-	-	67
4.4	Conclusions	-	-	-	-	-	-	-	69

CHAPTER FIVE: SUMMARY OF FINDINGS, RECOMMENDATIONS AND

	CONCLUSION	-	-	-	-	-	-	-	71
5.1	Summary of Findings	-	-	-	-	-	-	-	71
5.2	Recommendations	-	-	-	-	-	-	-	73
5.3	Conclusion	-	-	-	-	-	-	-	75
	BIBLIOGRAPHY	-	-	-	-	-	-	-	77

ABSTRACT

The topic critically examines the enduring and controversial practice of the death penalty within Nigeria's legal system. Though a feature of Nigerian law since the colonial era, its continued application stands in stark contrast to global abolitionist trends and poses significant questions regarding the sanctity of fundamental human rights enshrined in the *1999 Constitution (as amended)*.

The study employs a doctrinal approach, analyzing relevant Nigerian statutes, key judicial pronouncements, particularly of the Supreme Court and pertinent international human rights instruments to which Nigeria is a party. The Human Rights Perspective critically assesses the death penalty's impact on the constitutional rights to life as provided in *Section 33*¹ and freedom from torture or inhuman and degrading treatment as provided in *Section 34*². It highlights concerns surrounding the finality of the sentence in the face of flawed criminal justice processes, the persistent issue of wrongful convictions, and the ethical implications of the "death row phenomenon."

The study subsequently investigates the Constitutional Challenges, focusing on two primary areas: the legality of the mandatory death sentence for certain offenses, which limits judicial discretion, and the constitutional validity of execution methods. It analyzes the evolving jurisprudence of Nigerian courts which, while largely upholding the constitutionality of the death penalty, have concurrently introduced judicial safeguards and stricter interpretations of due process.

The research concludes that the practice of capital punishment, especially its mandatory nature and the lengthy delays preceding execution, is increasingly difficult to reconcile with the fundamental tenets of modern constitutional democracy and international human rights law. It recommends a legislative review to abolish mandatory sentencing and proposes a national moratorium as an essential step toward eventual abolition.

¹ Section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

² Section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

CHAPTER ONE INTRODUCTION

1.1. Background to the Study

The debate surrounding capital punishment in Nigeria remains one of the most critical and unresolved issues in the nation's legal and human rights landscape. This long essay critically examines the persistence of the death penalty within Nigeria's legal framework, assessing its profound implications from a dual perspective: adherence to international human rights standards and compliance with the fundamental guarantees enshrined in the 1999 Constitution (as amended). Capital punishment, a punitive measure inherited from colonial legislation, is currently prescribed for numerous offenses, including murder, armed robbery, treason, and, in some northern states, specific religious offenses under Sharia law. This continued retention positions Nigeria as an outlier against the global trend towards abolition, a posture that fuels intense moral, legal, and public security deliberations.

The research is motivated by the stark contradiction inherent in a democratic state retaining the power to deliberately extinguish the life of its citizens. While *Section 33(1)* of the Constitution permits the deprivation of life "in execution of the sentence of a court in respect of a criminal offence," the subsequent sections and Nigeria's international commitments place strict, evolving limits on the state's punitive powers. The core of the problem lies in the systemic flaws of the Nigerian criminal justice process, which include inadequate legal representation, extensive reliance on potentially coerced confessions, and the undeniable possibility of judicial error. When a flawed system applies an irreversible penalty, the potential for executing an innocent person, a possibility that fundamentally violates the right to life, cannot be ignored. Furthermore, the practice raises significant concerns under *Section 34* of the Constitution, which prohibits torture and inhuman or degrading treatment. The prolonged suffering and psychological trauma endured by the thousands of inmates on death row, often for decades, a

condition commonly referred to as the "death row phenomenon" is increasingly viewed globally and by progressive Nigerian legal thought as constituting such prohibited treatment. The human rights perspective adopted in this study compels a re-evaluation of Nigeria's compliance with instruments like the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights (ICCPR). Specifically, the ICCPR mandates that where the death penalty is retained, it must be reserved for the "most serious crimes." Many offenses currently punishable by death in Nigeria, such as armed robbery not resulting in death or certain non-homicidal offenses under Sharia, arguably fail to meet this elevated international threshold. The study delves into the philosophical and theoretical battlegrounds, contrasting the utilitarian arguments of deterrence and the retributive demands of justice, which form the bedrock of retentionist policy, against the foundational abolitionist principles of human dignity and the inherent fallibility of human justice.

Crucially, the essay addresses the major constitutional challenge posed by the widespread use of mandatory death sentences. Statutes such as the Robbery and Firearms (Special Provisions) Act remove all discretion from the sentencing judge, compelling the imposition of the death sentence regardless of mitigating factors like the offender's age (excluding juveniles, though even this is contentious), mental state, or the specific circumstances of the crime. This rigidity is widely argued to be a violation of the constitutional rights to a fair hearing and equality, as it treats varying degrees of culpability with the same terminal sentence. Nigerian courts, particularly the Supreme Court in cases like *Onuoha Kalu v. The State*³ has historically upheld the mandatory death penalty. However, more recent jurisprudence suggests a growing judicial unease, signaling a potential shift toward a more proportionate and rights-conscious application of the law, which this essay meticulously tracks.

³ *Onuoha Kalu v The State* [1998] 13 NWLR (Pt. 583) 531

The motivation for this research is therefore to transcend mere description of the law and offer a comprehensive, contemporary, and critical analysis. It seeks to illuminate the gap between Nigeria's constitutional aspirations as articulated in its commitment to fundamental rights and the grim reality of its capital sentencing practice. Employing a doctrinal research methodology, this essay analyzes primary legal texts, appellate decisions, and international legal commentary to build a case for reform. It contends that the issues of mandatory sentencing, the death row phenomenon, and the risk of irreversible error render the current application of capital punishment in Nigeria inconsistent with its character as a constitutional democracy committed to human dignity. The ultimate aim is to contribute actionable, evidence-based arguments to policymakers, jurists, and advocates, supporting the immediate implementation of a formal moratorium on executions and advocating for a legislative process leading to the penalty's complete abolition, thereby aligning Nigeria with the global human rights consensus.

1.2. Statement of Problem

Capital punishment remains a legally sanctioned form of punishment in Nigeria, prescribed for various offences including murder, armed robbery, kidnapping resulting in death, treason, and terrorism. While Section 33(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) permits the deprivation of life pursuant to a court sentence, the legitimacy and fairness of the death penalty have come under increasing scrutiny from both domestic and international legal perspectives.

The core problem arises from the tension between the constitutional recognition of the right to life and dignity of the human person, and the continued practice of capital punishment. Nigeria is a signatory to several international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights, which advocate for a restrictive and ultimately abolitionist stance on the death

penalty. Despite this, Nigeria has yet to formally abolish the death penalty or implement a moratorium on executions.

Another major issue is the arbitrary and inconsistent application of capital punishment, often compounded by systemic flaws in the Nigerian criminal justice system. These include poor investigation procedures, torture-induced confessions, inadequate legal representation, prolonged detention, and inordinate delays in appeals. Many death row inmates spend decades awaiting execution, resulting in severe psychological trauma, a phenomenon known as death row syndrome which raises serious concerns about cruel and inhuman treatment in violation of Section 34(1) of the Constitution.

Further complicating the issue is the lack of a coherent judicial stance on whether the death penalty is compatible with other constitutional rights, such as the right to fair hearing and freedom from torture. Nigerian courts have generally upheld the constitutionality of the death penalty without adequately interrogating its human rights implications, leaving a gap in progressive constitutional interpretation.

Moreover, socio-political and religious justifications for retaining capital punishment, particularly in Northern Nigeria under Sharia legal frameworks present challenges to national uniformity and compliance with global human rights standards. The tension between national laws, international obligations, and cultural or religious norms continues to hinder reform efforts.

In light of these complexities, the research seeks to address the following fundamental problems:

Is the continued application of the death penalty in Nigeria consistent with the country's constitutional guarantees of fundamental human rights?

Does the retention of capital punishment contravene Nigeria's obligations under international human rights law?

What legal, institutional, and policy reforms are necessary to align Nigeria's death penalty regime with contemporary human rights standards?

This thesis aims to critically examine these issues and provide reasoned recommendations for constitutional and legislative reforms that promote justice, human dignity, and compliance with Nigeria's human rights obligations.

1.3. Aims and Objectives of the Study

Aim of the Study

The primary aim of this study is to critically analyze the legal and constitutional implications of capital punishment in Nigeria, with a particular focus on its compatibility with human rights principles. The study seeks to evaluate whether the continued use of the death penalty in Nigeria is consistent with the country's constitutional provisions, international human rights obligations, and global human rights norms. Additionally, the research aims to propose recommendations for legal and policy reforms that address the human rights challenges posed by the death penalty in Nigeria.

Objectives of the Study

The specific objectives of the study are as follows:

To analyze the legal framework for capital punishment in Nigeria, including relevant statutes such as the Criminal Code Act, Penal Code Act, and the Nigerian Constitution, focusing on the provisions regarding the right to life, human dignity, and due process.

To examine Nigeria's international human rights obligations in relation to capital punishment, particularly through its ratification of international treaties such as the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR), and other human rights conventions that prohibit or place severe restrictions on the death penalty.

To evaluate the constitutional validity of the death penalty in Nigeria, assessing whether it is compatible with constitutional guarantees such as the right to life, the prohibition of torture, and the right to a fair trial, as outlined in Sections 33, 34, and 36 of the Nigerian Constitution.

To assess the practical challenges in the administration of the death penalty in Nigeria, including issues such as judicial oversight, miscarriages of justice, the use of torture to extract confessions, overcrowded prisons, death row syndrome, and lengthy delays in executions.

To explore comparative legal perspectives by examining countries that have abolished or reformed their death penalty laws, particularly focusing on African and Commonwealth jurisdictions, in order to draw lessons that could inform reform proposals for Nigeria.

To investigate public and institutional attitudes towards capital punishment in Nigeria, including the role of political, religious, and cultural factors in the retention of the death penalty, and the implications for future reforms.

To propose recommendations for legal and policy reforms in Nigeria that would align the country's capital punishment regime with contemporary human rights standards and international best practices, including potential alternatives to the death penalty.

To critically analyze judicial interpretations of capital punishment in Nigerian courts, with particular attention to how these interpretations influence the human rights discourse and contribute to the broader constitutional debate on the legitimacy of the death penalty.

1.4. Scope and Limitations of the Study

Scope of the Study

This study is primarily focused on examining the practice of capital punishment in Nigeria, particularly through the lens of human rights law and constitutional jurisprudence. It critically analyses the compatibility of the death penalty with the 1999 Constitution of the Federal

Republic of Nigeria (as amended), especially provisions relating to the right to life (Section 33), human dignity (Section 34), and fair hearing (Section 36).

The research also explores Nigeria's international legal obligations, drawing on treaties and conventions such as the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, and the Universal Declaration of Human Rights (UDHR). Emphasis is placed on how these instruments interact with Nigeria's domestic legal framework, particularly in the context of the retention and enforcement of capital punishment.

Furthermore, the study delves into selected judicial decisions from Nigerian courts that have interpreted or applied the death penalty, assessing the reasoning of the courts in upholding or challenging such sentences. For comparative purposes, the study briefly considers abolitionist and retentionist jurisdictions, especially within Africa and the Commonwealth, to draw lessons on possible reforms or alternatives to capital punishment.

The scope also includes analysis of Nigeria's death row population, the conditions of detention, and the length of time inmates spend on death row, which are crucial to understanding whether the current implementation of the death penalty violates broader human rights norms.

Limitations of the Study

This study, while offering a critical analysis of capital punishment in Nigeria, is constrained by several methodological and practical limitations. Access to primary empirical data posed the most significant challenge, as security and bureaucratic hurdles prevented the researcher from securing direct interviews with death row inmates, prison officials, or detailed, up-to-date execution records. Consequently, the analysis relies predominantly on secondary legal sources such as statutes, judicial precedents, and academic reports, potentially limiting the depth of insight into the "lived experience" of those directly affected by death row conditions and the

socio-economic factors driving capital offenses. Furthermore, while the research provides a broad overview of Nigerian jurisprudence, resource constraints meant it could not perform an exhaustive review of every relevant judicial decision, especially those from less-reported state-level cases or specialized Sharia courts, slightly restricting the completeness of the domestic legal landscape presented.

The scope of the study's contextual analysis is also subject to limitations. The comparative aspect is intentionally focused on a select few jurisdictions most relevant to Nigeria's legal tradition and regional context, rather than attempting a resource-intensive, exhaustive global survey. Moreover, the inherent political and cultural sensitivities surrounding capital punishment in Nigeria, particularly the distinct religious justifications under Islamic and customary law in the North, are acknowledged but not subjected to deep theological or cultural analysis, reserving the core focus for the constitutional and human rights frameworks. Finally, in a domain defined by perpetually evolving legal and political landscapes, the findings and reform recommendations presented herein may require periodic future re-evaluation to maintain their currency and optimal applicability. Despite these constraints, the study provides a robust and valuable legal contribution to the ongoing national discourse on the constitutionality and human rights implications of the death penalty.

1.5. Significance of the Study

The significance of this study lies in its potential to contribute meaningfully to legal scholarship, public policy, and human rights advocacy in Nigeria. The death penalty remains one of the most controversial aspects of Nigeria's criminal justice system, yet there has been limited academic attention given to its deeper constitutional and human rights implications within the Nigerian context. This study aims to fill that gap by providing a comprehensive and

critical analysis of the compatibility of capital punishment with Nigeria's constitutional framework and its international human rights obligations.

1.6. Research Methodology

The research methodology employed for this study is the doctrinal method, a systematic, library-based approach focused exclusively on analyzing existing legal sources. This method is essential because the study's core objective is to critique the constitutionality and human rights compliance of capital punishment in Nigeria, a task inherently demanding legal interpretation, not empirical data.

The method involves a rigorous examination of primary legal authorities, including the 1999 Nigerian Constitution, relevant criminal statutes (like the Criminal Code and Penal Code), and the landmark judgments of the Supreme Court (e.g. *Onuoha Kalu v The State*). By meticulously tracing the development of this jurisprudence, the study seeks to establish the current law in the books, identify internal legal contradictions (such as those concerning mandatory sentencing), and evaluate the law against international human rights standards. The doctrinal approach is thus perfectly justified as it provides the necessary framework for precise, legally grounded conclusions and robust reform recommendations that address the fundamental legal principles at stake.

1.7 Conclusion

This introductory chapter has provided the necessary foundation for a critical engagement with capital punishment in Nigeria, establishing the study as both timely and essential. We have defined the research problem as the fundamental tension between the Nigerian state's power to impose death under Section 33(1) of the Constitution and the non-derogable human rights obligations that mandate fairness, proportionality, and dignity. The chapter has delineated the

scope, justified the reliance on the doctrinal research methodology, and acknowledged the practical limitations. Crucially, the introduction underscores that persistent issues, including the risk of executing the innocent, the psychological torment of the "death row phenomenon," and the constitutional flaw of mandatory death sentencing render Nigeria's current practice deeply ambiguous in a modern human rights landscape. The analysis presented here is not merely an academic review, but a critical interrogation of the Nigerian justice system's ability to uphold its constitutional promises. In the subsequent chapters, the study will transition from this foundation to a detailed analysis of the legal history and theoretical justifications, culminating in specific recommendations for reform aimed at aligning Nigeria's penal policy with international human rights standards and the tenets of genuine constitutional democracy.

CHAPTER TWO

CONCEPTUAL CLARIFICATION, THEORETICAL FRAMEWORK AND LITERATURE REVIEW

2.1 Conceptual Clarification

This section aims to define and explain common terms relating to the topic and recurring terms throughout the work.

2.1.1 Definition of Terms

Capital Offences

A capital offence in Nigeria is broadly defined as any criminal offence that may attract the penalty of death. While the Criminal Code Act and Penal Code Act create and define the specific offences and their punishments, the Administration of Criminal Justice Act (ACJA) 2015 provides the procedural framework for trying these offences, particularly regarding bail. The Black's Law Dictionary defines capital offence as “a crime for which death penalty may be imposed”.⁴

Murder

The criminal code sets out circumstances that constitutes murder such as;

- (1) if the offender intends to cause the death of the person killed, or that of some other person;
- (2) if the offender intends to do to the person killed or to some other person some grievous harm;
- (3) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;

⁴ Black's Law Dictionary (12th ed. 2024)

- (4) if the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;
- (5) if death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid;
- (6) if death is caused by wilfully stopping the breath of any person for either of such purposes; is guilty of murder.

In the second case it is immaterial that the offender did not intend to hurt the particular person who is killed.

In the third case it is immaterial that the offender did not intend to hurt any person.

In the three last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.⁵

Culpable Homicide

The penal code defines culpable homicide (the equivalent of murder in the criminal code as;

Whoever causes death-

- (a) by doing an act with the intention of causing death or such bodily injury as is likely to or
- (b) by doing an act with the knowledge that he is likely by such act to cause death; or
- (c) by doing a rash or negligent act, commits the offence of culpable homicide.⁶

⁵ Sec 316 Criminal Code Act, Cap C38, Laws of The Federation of Nigeria 2004

⁶ Sec 220 Penal Code (Northern States) Federal Provisions Act, Cap P3, LFN 2004

Treason

Furthermore, The Criminal Code defines Treason and Conspiracy to Treason as

- (1) Any person who levies war against the State, in order to intimidate or overawe the President or the Governor of a State, is guilty of treason, and is liable to the punishment of death.
- (2) Any person conspiring with any person, either within or without Nigeria, to levy war against the State with intent to cause such levying of war as would be treason if committed by a citizen of Nigeria, is guilty of treason and is liable to the punishment of death:

Provided that nothing in this section shall prevent any act from being treason which is so by the law of England as in form in Nigeria.⁷

The Penal Code Act defines Treason as

- (1) Whoever levies war against the State, in order to intimidate or overawe the President, commits treason.⁸

Treachery

The Criminal Code Act also defines Treachery as:

- (1) If, with intent to help the enemy in any war in which Nigeria may be engaged, any person does, or attempts to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede such operations of the armed forces of Nigeria, or to endanger life, he shall be guilty of felony and shall on conviction suffer death.

⁷ Criminal Code act *Sec. 37 (1) and (2)*
⁸ Sec 410 Penal Code Act 2004

Directing Unlawful Trial by Ordeal

The criminal code defines this offence as;

“Any person who directs or controls or presides at any trial by ordeal which is unlawful is guilty of a felony, and is liable, when the trial which such person directs, controls or presides at results in the death of any party to the proceeding, to the punishment of death, and in every other case to imprisonment for ten years.”⁹

The Penal Code Act defines Trial by Ordeal as an unlawful trial by ordeal and whoever is present shall be punished by a term of imprisonment.

“However, if such trial results in the death of any party to the proceeding shall be punished with death.”¹⁰

Instigating Invasion of Nigeria

The criminal code defines this offence as;

“Any person who instigates any foreigner to invade Nigeria with an armed force is guilty of treason, and is liable to the punishment of death.”¹¹

Giving False Evidence

This is provided for in the Penal Code and it is provided as such;

(a) “whoever gives or fabricates false evidence intending thereby to cause or knowing it to be likely that he will thereby cause a person to be convicted of an offence which is punishable with death shall be punished with imprisonment for a term which may extend to life imprisonment and shall be also be liable to fine.” However, according to (b) if the convicted

⁹ Sec 208 Criminal Code Act 2004

¹⁰ Sec 214(b) Penal Code Act 2004

¹¹ *Sec. 38 Criminal Code Act 2004*

person as a result of this false evidence is innocent then the person who gave the false or fabricated evidence will be liable to the death penalty.¹²

Abetment of Suicide

The penal code defines this offence thus;

“If a person under 18 years of age, an insane person, a delirious person, an idiot, or a person in a state of intoxication commits suicide, whoever abets the commission of that suicide shall be punished with death.”¹³

Kidnapping

This is a capital offence in Nigeria at both the Federal level and in some states. It is punishable by death particularly when the act of kidnapping leads to the death of the abducted victim. At the Federal level it is provided in the Terrorism (Prevention and Prohibition) Act, 2022¹⁴ Certain states provide for kidnapping as a capital offence with death as the penalty for such offence. Some examples of these states are Anambra, Enugu, Abia, Akwa Ibom, Imo, Bayelsa, Bauchi, Cross River, Ebonyi, Kogi, Rivers, Lagos, Ogun, Ondo, Oyo and Edo states.¹⁵

Capital Punishments

The Criminal Code, Penal Code and Administration of Criminal Justice Act do not explicitly define the term “capital punishments”, however they list offences that can be classified as capital offences and are punishable by the death penalty.

¹² Sec 159 Penal Code Act 2004

¹³ Sec. 227 Penal Code Act 2004

¹⁴ Sec. 24 Terrorism (Prevention and Prohibition) Act, 2022

¹⁵ Edo State Kidnapping Prohibition (Amendment) Law, 2013

According to the Criminal Code murder is defined as "Any person who commits the offence of murder shall be sentenced to death."¹⁶ Treason is defined as "Levying war against the State to intimidate or overawe the President or Governor."¹⁷ Treachery is defined as "aiding an enemy of Nigeria in a war in which Nigeria is engaged".¹⁸ Other defined capital offences are Directing Unlawful Trial by Ordeal i.e. "Presiding over or directing an unlawful trial by ordeal that results in death"¹⁹ and Instigating Invasion of Nigeria i.e. "Instigating any foreigner to invade Nigeria with an armed force".²⁰

According to the Penal Code Act applicable in the Northern states and the FCT (Abuja), the Penal Code contains parallel provisions for capital offences. These provisions are culpable homicide and it is defined as; "an act punishable with death (equivalent to murder) where the act is done with the intention of causing death."²¹ Another capital offence provided for in the penal code is Treason and it states that "Whoever commits treason shall be punished with death."²² Also, giving false evidence falls under the category of capital offences by the penal code and it is defined as "Giving or fabricating false evidence which results in the conviction and execution of an innocent person".²³ Another capital offence is abetting of suicide which is defined as; "Abetting the suicide of a child, insane person, or intoxicated person".²⁴ and trial by ordeal which is defined as; "Presiding over a trial by ordeal which results in the death of a person."²⁵

The ACJA is a procedural law and does not create new capital offences. However, it recognizes the severity of "capital offences" in its provisions regarding bail. The ACJA Section 494

¹⁶ Sec. 319 Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004

¹⁷ *Ibid* sec. 37(1)

¹⁸ *Ibid* sec. 49A

¹⁹ *Ibid* sec. 208

²⁰ *Ibid* sec. 38

²¹ Sec. 221 Penal Code (Northern States) Federal Provisions Act, Cap P3, LFN 2004.

²² *Ibid*, s. 411.

²³ *Ibid*, s. 159(2).

²⁴ *Ibid*, s. 227.

²⁵ *Ibid* sec. 214

(Interpretation) does not explicitly define capital offence. Instead, it relies on the definitions provided in the substantive laws (Criminal Code and Penal Code). The Act explicitly makes bail exceptionally difficult for capital offences:

"A suspect arrested, detained or charged with an offence punishable with death shall only be admitted to bail by a Judge of the High Court, under exceptional circumstances..."²⁶

These exceptional circumstances are defined in **Section 161(2)** to include; ill health of the applicant which cannot be managed in custody, extraordinary delay in the investigation and arraignment and any other circumstances that the Judge considers exceptional.²⁷

2.2 Theoretical Framework

2.2.1 Historical Foundation: Nigeria's capital punishment framework is not originally Nigerian; it is a direct colonial import. The British colonial administration introduced it in the Criminal Code of 1916, which prescribed death for murder.²⁸ This law, reflecting the British law of the time, was retained without significant debate upon independence in 1960. The framework was then aggressively expanded during the subsequent decades of military rule. Military decrees, most notably the Robbery and Firearms (Special Provisions) Decree of 1970, introduced the mandatory death penalty for new offenses like armed robbery, cementing it as a tool of state control.²⁹ This dual colonial and military legacy was further complicated after 1999 by the adoption of Sharia Penal Codes in twelve northern states, which added a third layer of religious capital offenses.

This history is not just a backdrop; it is the source of the central conflict this essay explores. The colonial and military origins established the state's justification (the Just Deserts lens) based on absolute state power, rather than a negotiated social contract. The military's addition

²⁶ Sec. 161(1) Administration of Criminal Justice Act, 2015

²⁷ *Ibid* sec. 161(2)

²⁸ Criminal Code Act, originally enacted as the Criminal Code Ordinance of 1916 (No. 15 of 1916).

²⁹ Robbery and Firearms (Special Provisions) Decree 1970 (later Act, Cap. R11 LFN 2004).

of armed robbery was a direct, if untested, appeal to the utility of deterrence. Most critically, the adoption of the 1999 Constitution created the primary tension: it forced these old, inherited laws to suddenly answer to a new, modern framework of limitation and human rights. The constitutional challenges at the heart of this topic are, in essence, the story of this 1999 human rights framework (the Limitation lens) colliding with a 1916 colonial law (the Justification lens). To critically analyze the complex interplay of Constitutional Challenges and Human Rights Perspectives on capital punishment in Nigeria, a robust theoretical framework is essential. Such a framework provides the analytical lenses to move beyond a simple description of laws (the legal framework) to a deeper critique of their philosophical justifications, practical utility, and human rights limitations. This essay is built upon a tripartite theoretical structure that examines the state's justification for the death penalty, its practical utility, and the fundamental limitations imposed upon state power.

The state's retentionist stance is ideologically grounded in two foundational theories of punishment. First, Social Contract Theory, articulated by philosophers like Thomas Hobbes and Jean-Jacques Rousseau, posits that citizens cede certain rights to a sovereign state in exchange for protection. Under this framework, a crime like murder or treason constitutes a profound breach of this social contract, granting the state a legitimate right to extinguish the life of the violator to protect the commonwealth.³⁰ Second, and more directly, the state's position rests on Retributivism, or (Just Deserts) theory. As formulated by Immanuel Kant, this theory argues that punishment is a moral imperative, not a tool for social utility. Its purpose is to restore moral balance by ensuring a punishment proportional to the harm inflicted.³¹ This retributivist logic is the philosophical engine of the Criminal Code Act and Penal Code Act,

³⁰ Jean-Jacques Rousseau, *The Social Contract* (1762). This text explores the concept that by violating the social contract, the offender ceases to be a member of the state and may be treated as an enemy. [<https://www.gutenberg.org/files/46333/46333-h/46333-h.htm>]

³¹ Immanuel Kant, *The Metaphysics of Morals* (1797). Kant argued that any punishment other than death for murder would be disproportionate and, therefore, unjust.

which mandate death for murder not to deter others, but because it is deemed the only just and deserved response to the intentional taking of a life.

While retributivism justifies the penalty on moral grounds, its primary public and political defense rests on a different theory: Utilitarianism. This Criminological theory, associated with Jeremy Bentham, assesses the legitimacy of any law by its utility, its ability to produce the greatest good for the greatest number.³² In the context of criminal justice, this manifests as Deterrence Theory, which argues that capital punishment is good only if it can be empirically proven to deter other individuals from committing similar capital crimes. This lens provides a powerful framework for critique. It allows this essay to challenge the death penalty on its own practical terms: if, as evidence suggests, the penalty has no conclusive deterrent effect (particularly when its application is neither swift nor certain due to the de facto moratorium) then its primary utilitarian justification collapses.

Finally, the most critical lenses for this analysis are the theories of limitation: Constitutionalism and Human Rights Theory. Constitutionalism holds that state power is not absolute but is constrained by a supreme body of law; the Constitution, which mandates adherence to the Rule of Law. This framework is the basis for all procedural challenges. It allows for the central argument that even if capital punishment is de jure (legally) constitutional under Section 33(1), it becomes de facto (practically) unconstitutional when the state fails to guarantee the minimum procedural standards of Section 36 (Right to a Fair Hearing). A death sentence delivered after a trial lacking competent legal aid, or one based on a confession extracted through torture, is not an act of law but an act of arbitrary power.³³

³² Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789). This is the foundational text of classical utilitarianism. <https://www.gutenberg.org/ebooks/60817>

³³ This argument is central to the work of human rights organizations. See, Amnesty International, "Nigeria: Waiting for the Hangman," (2008). This report provides the factual basis for applying the theory of constitutionalism, showing systemic failures in fair trials. <https://www.amnesty.org/en/documents/AFR44/007/2008/en/>

This is crystallized by Human Rights Theory, which posits that certain rights, chief among them human dignity, are inalienable. This principle is enshrined in Section 34 of the 1999 Constitution and Article 7 of the International Covenant on Civil and Political Rights (ICCPR), both of which prohibit (torture or... inhuman or degrading treatment).³⁴ This theory provides the framework to challenge the nature of the punishment itself. It is the lens through which this essay analyzes the death row phenomenon i.e. the prolonged psychological anguish of decades in confinement as a form of inhuman treatment. It also grounds the absolute prohibition on the execution of juvenile offenders (codified in the Child's Rights Act, 2003) and provides a basis for challenging specific execution methods as inherently violative of human dignity. Together, these theories allow for a comprehensive critique: that while the Nigerian state claims the right to execute based on retributivism, its application fails the test of utility and is exercised in profound violation of its own constitutional and human rights obligations.

2.3 Literature Review

This section compares existing works to the current work and uses them as a backdrop to analyzing the topic of Capital Punishment in Nigeria further.

One of such works is **Crime and Public Safety in Nigeria** by Ettanibi E O Alemika who critically analyzes the effects of the death penalty in Nigeria and whether it is justifiable by noticeable evidence and trends.³⁵ This comprehensive text provides the bedrock necessary to challenge the constitutionality of capital punishment in Nigeria through a human rights lens. The work presents data from national victimization surveys that reveal a “two-track criminal justice system”, one that protects the rich and powerful while dispensing cruel and unusual punishment to the poor and powerless. This finding is central to the human rights argument

³⁴ International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, 999 U.N.T.S. 171. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³⁵ E E O Alemika (Ed.). (2014). *Crime and Public Safety in Nigeria*. CLEEN Foundation.

that the death penalty in Nigeria is discriminatory, violating the constitutional right to freedom from discrimination and equal protection under the law.³⁶

Furthermore, the text dismantles the deterrence argument which is the primary state justification for capital punishment. The author argues that deterrence is a function of the "celerity and certainty" of punishment rather than its severity³⁷; because Nigeria's system fails to ensure swift or certain prosecution, harsh penalties like death are ineffective. Additionally, the report documents widespread extrajudicial killings, torture, and abuse of power by security agents,³⁸

noting that in 2012 alone, 43% of respondents experienced physical assault by security forces.³⁹ These findings provide the factual evidence required to argue that the right to a fair hearing is systemically compromised, rendering the administration of the death penalty practically unconstitutional.

Another crucial work which relates strongly to this essay by Amnesty International and LEDAP which Chino Obiagwu heads and the work views the death penalty as unnecessarily harsh especially when placed against the backdrop of the modern international landscape of criminal justice. The Amnesty International and LEDAP report, "**Nigeria: Waiting for the Hangman,**" provides a critical examination of capital punishment in Nigeria based on direct interviews with over seventy death row inmates and legal practitioners, revealing profound human rights violations and constitutional contradictions.⁴⁰ The investigation exposes a justice system heavily skewed against the socioeconomically disadvantaged, where hundreds of inmates languish on death row often due to inadequate defense, while convictions frequently rely on

³⁶ E E O Alemika (2014). "Criminal victimization and criminal justice administration in Nigeria." In Crime and Public Safety in Nigeria, p. 17.

³⁷ *Ibid*

³⁸ B Abiri & B Maigari (2014). "Human Rights Violation in Nigeria." In Crime and Public Safety in Nigeria, p. 125.

³⁹ B Abiri & B Maigari (2014). "Human Rights Violation in Nigeria." In Crime and Public Safety in Nigeria, p. 141.

⁴⁰ Amnesty International & LEDAP. (2008). Nigeria: Waiting for the Hangman. Amnesty International Publications, pp. 5–7.

confessions extracted through torture or severe duress which is a systemic issue stemming from under-resourced policing.⁴¹ Despite judicial awareness of widespread torture, courts often admit such tainted evidence, constituting a breach of Nigeria's obligations under international standards.⁴² Furthermore, the report details the inhuman conditions and psychological anguish of prolonged detention known as the "death row phenomenon," where inmates wait decades for legal resolution, thereby undermining the constitutional right to dignity guaranteed in Section 34.⁴ Although Section 33 of the 1999 Constitution permits capital punishment, the report argues that its practical application is rendered arbitrary and unconstitutional by these pervasive procedural failures.⁴³ While the Supreme Court has upheld the death penalty's validity in cases like *Onuoha Kalu v The State*, focusing on statutory authorization, emerging judicial dissents suggest a gradual shift toward life imprisonment in response to the documented injustices.

Another important literature that aids the understanding of this topic is Olatunji Sholanke's **"The Constitutionality of the Death Penalty Under Nigerian Law**. This work critically analyzes the validity of the death penalty within the Nigerian criminal justice system. This 2012 article provides a critical legal analysis of capital punishment within the Nigerian constitutional framework, arguing that while the punishment is permissible under current Nigerian law, its practical administration frequently infringes upon the fundamental rights to life and human dignity.⁴⁴ The foundation of capital punishment in Nigeria lies in Section 33(1) of the 1999 Constitution, which guarantees the right to life but explicitly permits its deprivation in execution of the sentence of a court for a criminal offence.⁴⁵ Sholanke observes that the Nigerian judiciary, led by the Supreme Court, has strictly adhered to this textual interpretation,

⁴¹ *Ibid* pp. 11–18.

⁴² *Ibid* pp. 27–31, 34–36.

⁴³ *Ibid*, pp. 41–45.

⁴⁴ O O Sholanke(2012). "The Constitutionality of the Death Penalty under Nigerian Law." *Journal of Nigerian Law*, 14(2), 12-25. Abstract & Introduction.

⁴⁵ *Ibid* pp 12-25

notably in the locus classicus case of *Onuoha Kalu v. The State* (1998), where the apex court affirmed that the death penalty violates neither the right to life nor the dignity of the human person, provided it follows a competent judicial sentence. Despite its constitutional grounding, Sholanke highlights a profound tension between the death penalty and Section 34, which prohibits torture and inhuman or degrading treatment, arguing that the "death row phenomenon" associated with prolonged detention may constitute a violation of this right, irrespective of the sentence's legality. Furthermore, the scope of capital offences has expanded beyond homicide to include crimes such as kidnapping and adultery under Sharia penal codes, often carrying mandatory death sentences that strip judges of discretion and raise significant concerns regarding fair trial standards and the potential for irreversible judicial error. Sholanke contrasts Nigeria's retentionist stance with its obligations under international instruments like the International Covenant on Civil and Political Rights (ICCPR), which advocates for the limitation of the death penalty to only the most serious crimes, noting that Nigeria's practice is increasingly out of step with the global trend toward abolition and calling for a re-evaluation of the penal system through constitutional amendment and alternative sanctions.

Another key literature which supports this work is L O Taiwo's **Death Row Phenomenon and Methods of Execution: A Repugnant Violation of the Dignity of Mankind**. *African Journal of Law and Human Rights*. This work helps take a critical look at the adverse effects of the seemingly never-ending wait for execution which death row inmates are subjected to and the harsh inhumane conditions they experience in that time. The work provides a critical legal examination of whether the psychological anguish of prolonged detention on death row and the brutality of execution methods constitute a violation of fundamental human rights within the Nigerian context.⁴⁶ The work posits that while the death penalty is constitutionally

⁴⁶ L O Taiwo (2022). *Death Row Phenomenon and Methods of Execution: A Repugnant Violation of the Dignity of Mankind*. *African Journal of Law and Human Rights*, 6(2), p. 199

permissible under Section 33(1) of the 1999 Constitution of the Federal Republic of Nigeria, the post-sentencing experience characterized by isolation, harsh conditions, and an indeterminate wait for execution conflicts with the right to dignity and the prohibition against torture and inhuman treatment guaranteed by Section 34(1) and the Anti-Torture Act of 2017.⁴⁷ Taiwo identifies a divergence in judicial approaches to this "death row phenomenon," distinguishing between a conservative approach that requires proof of specific harsh conditions beyond mere delay, and a progressive approach, adopted by jurisdictions like Jamaica and Zimbabwe, which views inordinate delay alone as sufficient grounds for finding a violation of human rights.⁴⁸ The article argues that the Nigerian Supreme Court, while acknowledging that inhuman treatment gives rise to a cause of action, has yet to fully accept the progressive view that such treatment should nullify the death sentence itself, creating a legal contradiction where a valid sentence is executed through unconstitutional means.⁴⁹ Ultimately, the text contends that the death row phenomenon subjects inmates to double jeopardy through psychological torture followed by physical execution and recommends that Nigeria align with international standards by recognizing this phenomenon as a breach of the dignity of mankind and moving towards the abolition of the death penalty or the commutation of sentences to life imprisonment to avoid these egregious constitutional violations.⁵⁰

Another very important literature which relates to the topic and takes a look at the current state of the correctional facilities and institutional framework of sentencing and keeping convicted persons in Nigeria is Festus Okpoto Agbo's 2022 article, "**Sentencing Guidelines and Prison Congestion in Nigeria: Challenges and Prospects for Decongestion,**" which provides a critical examination of the Nigerian criminal justice system, arguing that the absence of standardized sentencing guidelines facilitates judicial inconsistency and exacerbates the

⁴⁷ *Ibid* pp 200-201

⁴⁸ *Ibid* pp 203-204

⁴⁹ *Ibid* 202, 207

⁵⁰ *Ibid* p 208

humanitarian crisis within correctional centers.⁵¹ While the work primarily addresses the broad spectrum of sentencing disparities, it offers significant insight into the human rights implications of capital punishment by contrasting the "certainty" of mandatory death sentences with the chaotic discretion applied to other offenses.⁵² Agbo posits that unlike the unpredictability surrounding other crimes, the death penalty remains one of the few areas of rigid certainty in Nigerian law because statutes such as the Robbery and Firearms (Special Provisions) Act strip judges of the discretion to consider mitigating factors, thereby mandating death sentences regardless of the individual circumstances.⁵³ This statutory rigidity is contrasted with the confusion evident in other homicide or serious assault cases, such as *Folorunso v The State*,⁵⁴ where technicalities regarding cause of death reduced a likely capital conviction to a fixed imprisonment term, illustrating a systemic lack of uniformity that undermines public confidence.⁵⁵ From a human rights perspective, the author explicitly links the overuse of incarceration stemming from this uncoordinated sentencing to the severe congestion of prisons, which he argues results in the total loss of rehabilitation objectives and the round abuse of inmates' fundamental rights.⁵⁶ Furthermore, the text draws a sharp comparison between the United Kingdom and Nigeria regarding the treatment of young offenders in capital cases; whereas the UK utilizes specific sentencing guidelines to determine minimum terms for minors involved in murder, the Nigerian system indefinitely detains such youths "at the pleasure of the governor" because the mandatory death penalty cannot be applied

⁵¹ F O Agbo. (2022). Sentencing Guidelines and Prison Congestion in Nigeria: Challenges and Prospects for Decongestion. *Global Journal of Politics and Law Research*, 10(6), p. 27. <https://www.eajournals.org/wp-content/uploads/Sentencing-Guidelines-and-Prison-Congestion-in-Nigeria-21.pdf> <accessed 22nd of November 2025>

⁵² *Ibid* p 38

⁵³ *Ibid* p 38

⁵⁴ *Folorunso v The State (2014) 4 NWLR (Pt. 1396) 589 (SC)*
<https://www.lawglobalhub.com/folorunsho-v-the-state-2014-lljr-sc/> <accessed 22nd of November 2025>

⁵⁵ *Ibid* p 40

⁵⁶ *Ibid* p 32

to them, leaving them in a legal limbo.⁵⁷ Consequently, Agbo recommends the establishment of a Nigerian Sentencing Commission and the enactment of comprehensive guidelines to regulate judicial discretion and promote non-custodial options, arguing that such reforms are necessary to ensure that all punishments, including those for capital offenses, are administered with fairness, uniformity, and respect for human dignity.⁵⁸

When comparing these respective works the topic in focus we can draw many parallels throughout the existing literature and this thesis. The collective body of scholarship regarding capital punishment in Nigeria presents a compelling argument that the practice is fundamentally at odds with human rights standards and constitutional guarantees, as evidenced by the distinct yet interconnected findings of various legal and criminological experts. L.O. Taiwo highlights the "death row phenomenon," arguing that the psychological torture of prolonged detention and the brutality of execution methods violate the constitutional right to dignity found in Section 34, thereby rendering the practice incompatible with global humanitarian standards.⁵⁹ This human rights critique is reinforced by Etannibi Alemika, who challenges the practical utility of the death penalty by arguing that it fails to deter violent crime and instead serves as a mask for deep structural failures within the policing and justice sectors.⁶⁰ Providing the observable evidence for these claims, the report "Waiting for the Hangman" by Chino Obiagwu, Amnesty International, and LEDAP exposes the systemic bias against the poor and the pervasive lack of fair trials, demonstrating that the administration of the death penalty is fraught with prosecutorial misconduct and injustice.⁶¹ From a jurisprudential standpoint, Olatunji Sholanke contends that although the constitution technically permits

⁵⁷ *Ibid* p 41

⁵⁸ *Ibid* p 42

⁵⁹ L O Taiwo (2022). Death Row Phenomenon and Methods of Execution: A Repugnant Violation of the Dignity of Mankind. African Journal of Law and Human Rights.

⁶⁰ E E O Alemika(Ed.). (2014). Crime and Public Safety in Nigeria. CLEEN Foundation.

⁶¹ Amnesty International & LEDAP. (2008). Nigeria: Waiting for the Hangman. Amnesty International Publications.

capital punishment, the procedural realities, such as forced confessions and inadequate legal defense undermine its legitimacy and violate the spirit of constitutional protections.⁶² Finally, Festus Agbo expands this analysis to the prison system itself, illustrating how mandatory death sentences and a lack of sentencing guidelines contribute to severe overcrowding, creating a humanitarian crisis that further degrades the dignity of inmates.⁶³ When viewed together, these works form a cohesive argument that the death penalty in Nigeria is not merely a legal sanction but a source of profound constitutional and human rights violations that requires a radical re-evaluation rather than simple reform.

Critical Gaps in the Existing Literature on Capital Punishment in Nigeria

While the collective scholarship of L.O. Taiwo, Etannibi Alemika, Festus Agbo, and others have significantly illuminated the constitutional and human rights crises surrounding capital punishment in Nigeria, a critical synthesis reveals substantial gaps that future research must address to provide a holistic understanding of the system. For instance, although the psychological anguish of the "death row phenomenon" is vividly described in legal terms, there is a marked absence of systematic, quantitative research regarding the specific mental health outcomes, such as rates of suicide, psychosis, and long-term clinical trauma among condemned inmates.⁶⁴ This lack of granular data extends to specific demographics, as the unique experiences of women, juveniles, and persons with mental disabilities remain largely under-explored, leaving a blind spot regarding how capital punishment intersects with gender and

⁶² O O Sholanke (2012). The Constitutionality of Death Penalty under Nigerian Law. *Journal of Nigerian Law*.

⁶³ F O Agbo (2022). Sentencing Guidelines and Prison Congestion in Nigeria: Challenges and Prospects for Decongestion. *Global Journal of Politics and Law Research*.

⁶⁴ L O Taiwo (2022). "Death Row Phenomenon and Methods of Execution: A Repugnant Violation of the Dignity of Mankind." *African Journal of Law and Human Rights*, 6(2), pp. 202–204. (Regarding the qualitative description of psychological pain vs. the lack of clinical data) <https://journals.ezenwaohaetorc.org/index.php/AJLHR/article/download/2171/2215> <accessed 22nd of November 2025>

vulnerability contrary to evolving international protections.⁶⁵ Similarly, while the narrative that capital punishment is a "penalty for the poor" is well-established, there is a need for rigorous socio-legal studies that statistically quantify exactly how factors like poverty, regional location, and the quality of defense counsel deterministically shape judicial outcomes.⁶⁶ Beyond the accused, the literature notably overlooks the human element of the victims' families and the broader community, failing to capture their emotional responses, their actual perceptions of justice, or their attitudes toward abolition, which are essential for a comprehensive social analysis.⁶⁷ On a criminological level, while the deterrent value of the death penalty is frequently questioned, robust data-driven comparisons measuring its crime-reduction effectiveness against life imprisonment or non-custodial alternatives are largely missing from the Nigerian context.⁶⁸ Structurally, there is insufficient analysis regarding the practical implementation of sentencing reforms and pilot schemes in specific courts to see if they actually reduce congestion, as highlighted by Agbo's critique of current guidelines, nor is there adequate inquiry into whether targeted judicial and prosecutorial training could effectively mitigate systemic fair trial deficits.⁶⁹ This opacity permeates the executive level as well, where there is a scarcity of independent data on official execution statistics and conditions, alongside a lack of detailed analysis regarding the opaque mechanisms of executive clemency and the specific

⁶⁵ T C Orisaremi & C Odinkalu (2014). "Domestic and Sexual Violence." In *Crime and Public Safety in Nigeria*, pp. 116–117. (Regarding the specific and under-researched vulnerabilities of women in the justice system).

⁶⁶ B Abiri & B Maigari (2014). "Human Rights Violation in Nigeria." In *Crime and Public Safety in Nigeria*, pp. 140 and 126 (Regarding the statistical need to quantify socio-economic bias).

⁶⁷ M U Ikoh & K Okenyodo (2014). "Patterns of Criminal Victimization in Nigeria: 2005-2012." In *Crime and Public Safety in Nigeria*, p. 57. (Regarding the need to include secondary victims and community impact). <https://figshare.com/ndownloader/files/42950602> <accessed 22nd of November 2025>

⁶⁸ E E O Alemika (2014). "Criminal victimization and criminal justice administration in Nigeria." In *Crime and Public Safety in Nigeria*, p. 17. (Regarding the critique of deterrence without comparative data on alternatives). <https://www.cleen.org/portfolio/crime-and-public-safety-in-nigeria-2014/> <accessed 22nd of November 2025>

⁶⁹ F O Agbo(2022). "Sentencing Guidelines and Prison Congestion in Nigeria: Challenges and Prospects for Decongestion." *Global Journal of Politics and Law Research*, 10(6), pp. 38–39. (Regarding the lack of study on sentencing reform implementation). <https://www.eajournals.org/wp-content/uploads/Sentencing-Guidelines-and-Prison-Congestion-in-Nigeria-21.pdf> <accessed 22nd of November 2025>

political or social factors influencing the signing or refusal to sign death warrants.⁷⁰ Finally, the discourse rarely engages with the post-conviction reality, specifically the long-term fate of exonerated inmates regarding their reintegration and compensation, nor does it fully explore the tangible impact of international human rights advocacy on actually shaping domestic legislative and judicial attitudes.⁷¹

2.4 Conclusion

In summary, this chapter has brought together the most important voices and evidence to understand the true state of capital punishment in Nigeria, moving beyond legal theories to face the harsh realities of the system. By weaving together scholarly research, real-life data, and legal analysis, a disturbing picture has emerged that challenges the very foundation of the death penalty. Through the work of L.O. Taiwo, we have seen the deep psychological torture and human rights violations inherent in the "death row phenomenon," where inmates are trapped in a hopeless limbo. Etannibi Alemika and his collaborators have forced us to question the practical value of the death penalty, arguing that it fails to make society safer and instead masks the deeper failures of the police and justice system. The heartbreaking testimonies and hard data from the "Waiting for the Hangman" report have exposed a system that is rigged against the poor, where justice is often a commodity that the vulnerable cannot afford. Furthermore, Olatunji Sholanke has illuminated the cracks in the constitutional foundation, while Festus Agbo has demonstrated how a chaotic lack of sentencing guidelines leads to overcrowded prisons and arbitrary punishment.

⁷⁰ L O Taiwo (2022). Op. cit., p. 203. (Regarding the lack of analysis on executive discretion and death warrants). <https://journals.ezenwaohaetorc.org/index.php/AJLHR/article/download/2171/2215> <accessed 22nd of November 2025>

⁷¹ B Abiri, & B Maigari(2014). Op. cit., p. 126. (Regarding the lack of accountability and reintegration for victims of state power abuse).

What becomes undeniably clear from these combined works is that the system's failures, unfair trials, agonizing delays, bias against the poor, and the neglect of vulnerable groups are not just occasional accidents; they are deep-seated flaws that rot the system from the inside out. These issues strip the death penalty of its legitimacy and effectiveness. The evidence points to a singular conclusion: Nigeria requires urgent and fundamental reform. This goes beyond simply tweaking a statute; it demands a complete overhaul that ensures strict adherence to due process, the creation of fair and uniform sentencing rules, and a genuine commitment to treating every individual with humanity. Until these foundational issues are resolved, the continued use of the death penalty will remain a stain on the nation's conscience, forcing the country to confront difficult ethical questions about its true commitment to human dignity and the rule of law.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORKS FOR CAPITAL PUNISHMENT IN NIGERIA

3.1 Introduction

Capital punishment remains legally recognised in Nigeria, supported by constitutional provisions and various criminal statutes that prescribe the death penalty for specific offences. Its operation also depends on the institutions responsible for trial, enforcement, imprisonment and possible clemency. This chapter examines that legal and institutional framework by outlining the laws that authorise capital punishment in Nigeria and the key bodies involved in its administration, review and execution.

3.2 Legal Frameworks for Capital Punishment

3.2.1 Constitutional Basis

The legal framework underpinning capital punishment in Nigeria is not found in a specific statute authorising the death penalty, but rather in the supremacy of the Constitution and its qualified guarantee of the right to life. The 1999 Constitution of the Federal Republic of Nigeria (as amended) serves as the primary legal source, establishing a permissive framework through a critical exception clause.

The foundational provision is Section 33(1), which guarantees that "Every person has a right to life."⁷² However, this right is immediately qualified by the exception that "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."⁷³ This "save in execution" clause is the cornerstone of the death penalty's constitutionality. It explicitly allows the state to

⁷² Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 33(1). <https://placng.org/legist/the-constitution-of-the-federal-republic-of-nigeria-1999/> <accessed 15th November 2025>

⁷³ *Ibid*, section 33(1).

derogate from the right to life, provided it is a consequence of a judicial sentence following a criminal conviction.

This constitutional permission is activated and constrained by other constitutional provisions, particularly those in Section 36 governing the right to a fair hearing. For the "sentence of a court" in Section 33(1) to be valid, the conviction must be for an offence that is "defined... in a written law" and has a penalty prescribed therein.⁷⁴ This linkage ensures that capital punishment cannot be applied arbitrarily; it must be tied to specific, pre-existing statutes, such as the Criminal Code Act (which proscribes murder)⁷⁵ or the Robbery and Firearms (Special Provisions) Act (which proscribes armed robbery).⁷⁶

The constitutionality of this framework was definitively settled by the Supreme Court of Nigeria in the locus classicus of *Onuoha Kalu v. The State* (1998).⁷⁷ The appellant argued that the death penalty was a violation of the right to life (Section 33) and the right to human dignity (Section 34). The Supreme Court dismissed this argument, holding that the death penalty is not unconstitutional precisely because it is expressly contemplated and provided for within the text of the Constitution itself. The court reasoned, in essence, that a provision explicitly permitted by the Constitution cannot be invalidated by other sections of the same Constitution.

Thus, the Nigerian legal framework for capital punishment is a tripartite structure: the Constitution (S. 33) provides the permission, the specific statutes (e.g., the Criminal Code, Penal Code, etc) provide the offences, and the procedural guarantees of the Constitution (S. 36) provide the safeguards for its execution.

⁷⁴ Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 36(12).

⁷⁵ Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria, 2004, s. 319
<https://lawsofnigeria.placng.org/laws/C38.pdf> <accessed 15th November 2025>

⁷⁶ Robbery and Firearms (Special Provisions) Act, Cap. R11, Laws of the Federation of Nigeria, 2004.

⁷⁷ *Onuoha Kalu v The State* [1998] 13 NWLR (Pt. 583) 531.

3.2.2 Statutory Offences and Laws In Nigeria

a. *Criminal Code Act 2004:*

The primary legislation detailing major criminal offences in Southern Nigeria is the Criminal Code Act.⁷⁸ This statute, which is codified as Chapter C38 of the Laws of the Federation of Nigeria (LFN) 2004, outlines several offences that mandate capital punishment (the death penalty).

Capital Offences in the Criminal Code Act

The Act prescribes the death penalty for the following three specific offences:

Murder

This is the most widely cited capital offence. The Act explicitly states that any individual convicted of murder shall be sentenced to death.⁷⁹ The preceding sections (notably Section 316) define the specific circumstances under which an unlawful killing is classified as murder, distinguishing it from manslaughter.

Treason

The offence of treason also carries a mandatory death sentence.⁸⁰ Treason is defined as a range of acts constituting a betrayal of the state, including (but not limited to) levying war against Nigeria, attempting to overthrow the government by force, or instigating a foreign power to invade the country.

⁷⁸ Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria, 2004.
<https://lawsofnigeria.placng.org/laws/C38.pdf> <accessed 15th November 2025>

⁷⁹ *Ibid*, Section 319(1)

⁸⁰ *Ibid*, Section 37.

Treachery

A third capital offence specified in the code is treachery.⁸¹ This section pertains to acts of betrayal or disloyalty, particularly during a time of war, mutiny, or other specified state emergencies, committed by individuals who may or may not be members of the armed forces. It is important to note that the Criminal Code is not exhaustive and is limited geographically to the southern states in Nigeria. Beyond the foundational Criminal Code, Nigeria's legal architecture for capital punishment is significantly shaped by two other major statutes: the Penal Code, which applies regionally in the North, and the Robbery and Firearms Act, which applies federally.

b. Penal Code:

The **Penal Code** serves as the primary source of criminal law for the nineteen northern states of Nigeria and the Federal Capital Territory (FCT).⁸² This framework, which has a different origin from the southern Criminal Code, provides for the death penalty for **Culpable Homicide Punishable with Death**. This offence is the Penal Code's analogue to murder and is defined with a high threshold of intent in **Section 221 of the Penal Code Act**. The section stipulates that a person who commits culpable homicide shall be punished with death in two specific instances:

" if the act by which the death is caused is done with the intention of causing death; or
(b) if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act..."⁸³

⁸¹ *Ibid*, Section 49A.

⁸² The Penal Code was originally introduced as the Penal Code Law, 1960, for the former Northern Region. The federal version applying to the FCT is the Penal Code Act, Cap. P3.

⁸³ Penal Code Act, Cap. P3, Laws of the Federation of Nigeria, 2004, s. 221. <https://lawsofnigeria.placng.org/laws/P3.pdf> <accessed 15th November 2025>

This provision forms the basis for capital homicide prosecutions in the northern half of the country, operating in parallel to the Criminal Code's murder provisions.

Adultery (Zina): The Sharia Penal Codes (SPCs) mandate death by stoning (rajm) for zina (unlawful sexual intercourse) when the offender is muhsan (married or has been married).⁸⁴

Rape: This offence is often treated as a form of zina, and a convicted rapist who is muhsan is subject to the same Hadd punishment of death by stoning.⁸⁵ This video from News Central details the recent Nigerian Senate approval of life imprisonment for child defilement, which relates to the broader legal discussions surrounding crimes against minors in Nigeria.⁸⁶

Sodomy (Liwat): The act of sodomy is also a capital offence. The Jigawa State Shari'ah Penal Code, for example, states that "Whoever commits the offence of sodomy shall be punished with stoning to death (rajm)."⁸⁷

Judicial Provisions and Key Cases

The implementation of these capital sentences has been tested and largely curtailed by appellate courts, which have enforced high procedural and evidentiary standards rooted in Sharia principles.

The most prominent cases are Safiya Hussein⁸⁸ v. A-G, Sokoto State (2002) and Amina Lawal v. The State (2003). In both cases, women were sentenced to death by stoning for zina by lower Sharia courts. Both convictions were quashed by their respective Sharia Courts of Appeal. It is

⁸⁴ Zamfara State Shari'ah Penal Code Law, 2000, s. 127.

⁸⁵ *Ibid*, ss. 128-129.

⁸⁶ https://youtu.be/pqXPvc-_bVk?si=QcP21fcI3qXf5tgB <accessed 15th November 2025>

⁸⁷ Jigawa State Shari'ah Penal Code Law, 2000, s. 131.

<https://moj.jg.gov.ng/wp-content/uploads/2021/08/Chapter-S7-Shariah-Penal-Code-Law.pdf> <accessed 15th November 2025>

⁸⁸ Amnesty International, "Nigeria: Safiya Hussein's death sentence quashed," 25 March 2002. This press release details the legal grounds for the acquittal. <https://www.amnesty.org/en/documents/afr44/008/2002/en/> <accessed 15th November 2025>

important to note that these cases were decided by state-level Sharia Courts of Appeal, not the Supreme Court of Nigeria. Therefore, they are not typically cited in national law reports (like the NWLR or SCNLR). Instead, they are cited in academic journals, human rights reports, and legal analyses, which serve as the primary sources for these judgments.

The appellate courts overturned the sentences based on fundamental procedural and evidentiary failures, thereby establishing key judicial provisions:

Evidentiary Burden: The prosecution failed to meet the high Hadd standard of proof, which requires either a valid (non-coerced and retractable) confession or the testimony of four adult male eyewitnesses to the act of penetration.⁸⁹

Procedural Flaws: The courts found gross procedural irregularities, including the denial of the right to legal counsel, failure to inform the accused of the charges, and the unconstitutionality of applying laws retroactively.⁹⁰

Thus, while the SPCs statutorily provide for capital punishment for these Hudud offences, stringent judicial review and high evidentiary barriers have, in practice, prevented executions for them.

c. Robbery and Firearms Act:

A separate, and arguably more stringent, framework is the **Robbery and Firearms (Special Provisions) Act**. Unlike the Criminal and Penal Codes, this is a federal statute with uniform

⁸⁹ A detailed analysis of the evidentiary standards in these cases is provided by Human Rights Watch, "Political Shari'a": Human Rights and Islamic Law in Northern Nigeria," 2004, Vol. 16, No. 9(A). This comprehensive report provides an in-depth legal analysis of both the Hussein and Lawal appeal judgments.

⁹⁰ <https://www.hrw.org/reports/2004/nigeria0904/5.htm> <accessed 15th November 2025>
The Constitution of the Federal Republic of Nigeria, 1999, s. 36(8), prohibits retroactive criminal legislation. The appellate court in Hussein found the alleged offence occurred before the SPC was enacted.

application across the entire Nigerian federation.⁹¹ It was enacted specifically to address the prevalence of armed robbery and creates a mandatory death sentence for the offence. The Act is unequivocal in its prescription. **Section 1(2)** of the Act states — "If— (a) any offender mentioned in subsection (1) of this section is armed with any firearms or any offensive weapon or is in company with any person so armed; or (b) at or immediately before or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person, the offender shall be... sentenced to death."⁹² The language of this provision is mandatory ("*shall be... sentenced to death*"), removing all judicial discretion. If the elements of the offence are proven, the court has no alternative but to impose a death sentence, making this Act one of the most potent and frequently utilized legal bases for capital punishment in contemporary Nigeria.

Other Capital Offences: Beyond the primary capital offences of murder, treachery, and armed robbery, Nigerian law prescribes the death penalty for several other specific, aggravated offences. These are found in both the Criminal Code (South) and the Penal Code (North and FCT), and they highlight the gravity with which the state views conspiracy against it, the perversion of justice, and the exploitation of vulnerable persons.

Conspiracy to Treason

While Section 37(1) of the Criminal Code Act establishes the death penalty for the act of treason, Section 37(2) explicitly extends this penalty to conspiracy.⁹³ The Act provides that any person who "conspires with any person... to levy war... in order to intimidate or overawe the President or the Governor of a State" is guilty of treason and liable to the death penalty. This

⁹¹ Robbery and Firearms (Special Provisions) Act, Cap. R11, Laws of the Federation of Nigeria, 2004.

⁹² *Ibid*, s. 1(2)

<https://lawsofnigeria.placng.org/laws/R11.pdf> <accessed 15th November 2025>

⁹³ Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria, 2004, s. 37(2).
<https://lawsofnigeria.placng.org/laws/C38.pdf> <accessed 15th November 2025>

makes the agreement to commit treason as capital an offence as the act itself. The ingredients for treason and treasonable felony, which form the object of such a conspiracy, were affirmed by the Supreme Court in *Bukar v. The State*.⁹⁴

Kidnapping

This is also a capital offence in Nigeria at both the Federal level and in some states. It is punishable by death particularly when the act of kidnapping leads to the death of the abducted victim. The Criminal Code, Penal Code and ACJA do not provide for kidnapping as a capital offence. It is punishable by a prison term usually extending to life imprisonment. At the Federal level it is provided in the Terrorism (Prevention and Prohibition) Act, 2022. Certain states provide for kidnapping as a capital offence with death as the penalty for such offence. Some examples of these states are Anambra, Enugu, Abia, Akwa Ibom, Imo, Bayelsa, Bauchi, Cross River, Ebonyi, Kogi, Rivers, Lagos, Ogun, Ondo, Oyo and Edo states.⁹⁵

Capital Offences in the Penal Code Framework

The Penal Code Act, which applies to the northern states and the Federal Capital Territory, contains at least two notable capital offences not found in the Criminal Code.⁹⁶

Fabricating False Evidence: The Penal Code creates a capital offence for perjury or fabricating evidence that leads to the death of an innocent person. Section 159(2) of the Act states that if an innocent person is convicted and executed "in consequence of such false evidence, the person who gives such false evidence shall be punished with death."⁹⁷ This

⁹⁴ *Bukar v The State* [1999] 11 NWLR (Pt. 625) 1. This case is a locus classicus for treason and treasonable felony in Nigeria.

⁹⁵ For example, Sec 24 Terrorism (Prevention and Prohibition) Act 2022 (For Edo State)

⁹⁶ Penal Code Act, Cap. P3, Laws of the Federation of Nigeria, 2004.
<https://lawsofnigeria.placng.org/laws/P3.pdf><accessed 15th November 2025>

⁹⁷ *Ibid*, s. 159(2).

provision underscores a zero-tolerance policy for the perversion of justice that results in a wrongful execution.

Abetment of Suicide of a Child or Person of Unsound Mind: While abetting the suicide of a competent adult carries a prison sentence, Section 231 of the Penal Code makes it a capital crime to exploit the vulnerable. It provides that "Whoever abets the commission of suicide by any child under eighteen years of age or by any person of unsound mind... shall be punished with death."⁹⁸ This law provides an ultimate protection for those deemed legally incapable of consenting to their own destruction. This list is not exhaustive, as various states may have specific laws. Furthermore, as previously noted, several northern states operating under Sharia Penal Codes have expanded the list of capital offences to include religious Hudud crimes, subject to high standards of appellate review.

3.3 Execution Procedure and Prescribed Methods

The execution of a death sentence in Nigeria is contingent upon a defined legal and administrative process. Following a conviction and sentencing, the execution is, in theory, stayed pending the exhaustion of all judicial and executive remedies available to the convict.

Legal and Procedural Framework

The procedure is multi-layered, involving both the judiciary and the executive. A convict has a constitutional right of appeal, which can be pursued up to the Supreme Court. The execution is unlawful if carried out while an appeal is pending, a principle emphatically established by the Supreme Court in *Bello v. Attorney-General of Oyo State*, where an execution conducted during the pendency of an appeal was declared unconstitutional and a "pre-emptive and reckless disregard" of the judicial process.⁹⁹

⁹⁸ *Ibid.*, s. 231.

⁹⁹ *Bello v Attorney-General of Oyo State [1986] 5 NWLR (Pt. 45) 828.*

Following the exhaustion of judicial appeals, the convict may seek executive clemency. This is governed by the "Prerogative of Mercy," which is vested in the State Governor (acting on the advice of an advisory council) for state offences, or the President for federal offences.¹⁰⁰ Only after these remedies are exhausted and the Governor (or President) signs a formal death warrant is the execution legally sanctioned.

Methods of Execution

Nigerian law does not prescribe a single, uniform method of execution. The method is dictated by the specific statute under which the convict was sentenced.

Hanging: This is the most common and default method prescribed for capital offences under the Criminal Code (murder) and the Penal Code (culpable homicide). Section 404 of the Administration of Criminal Justice Act (ACJA) 2015, which applies federally and is adopted by many states, explicitly states: "The punishment of death is inflicted by hanging the convict by the neck till he is dead."¹⁰¹

Firing Squad: This method is primarily associated with the Robbery and Firearms (Special Provisions) Act.¹⁰² While the Act itself simply prescribes the "sentence of death," execution by firing squad has been the established practice for convictions under this law, often specified in the sentence.

Stoning (Rajm): This method is exclusive to the Sharia Penal Codes adopted by twelve northern states. It is prescribed as the Hadd (fixed) punishment for Hudud offences, specifically

¹⁰⁰ Section 175 and 212 of the Constitution of the Federal Republic of Nigeria, 1999 as amended <https://placng.org/legist/the-constitution-of-the-federal-republic-of-nigeria-1999/><accessed 15th November 2025>

¹⁰¹ Administration of Criminal Justice Act, 2015, s. 404 <https://www.lawcer.org/wp-content/uploads/2020/01/ADMINISTRATION-OF-CRIMINAL-JUSTICE-ACT-2015.pdf><accessed 15th November 2025>

¹⁰² Robbery and Firearms (Special Provisions) Act, Cap. R11, Laws of the Federation of Nigeria, 2004, s. 1(2). <https://lawsofnigeria.placng.org/laws/R11.pdf><accessed 15th November 2025>

zina¹⁰³ (adultery) committed by a muhsan (married person) and, in some state codes, sodomy.¹⁰⁴ As established in the Amina Lawal and Safiya Hussein cases, this sentence has not been carried out due to the high evidentiary and procedural barriers required by Sharia law itself.

3.4 International and Human Rights Dimensions

While Nigeria's domestic laws provide a clear legal basis for capital punishment, this framework is constrained by the country's international legal obligations. Nigeria is a party to the International Covenant on Civil and Political Rights (ICCPR), which, while not abolishing the death penalty, imposes significant restrictions on its application.¹⁰⁵

Article 6 of the ICCPR is paramount, stipulating that the death penalty may be imposed "only for the most serious crimes" and "shall not be imposed for crimes committed by persons below eighteen years of age."¹⁰⁶

This international framework provides the backdrop for significant human rights concerns regarding the practice of capital punishment in Nigeria:

Fair Trial Guarantees: Human rights organizations frequently raise concerns about the quality of justice in capital cases, arguing that it often fails to meet the high standards of fair trial required by Article 14 of the ICCPR and Section 36 of the Nigerian Constitution.¹⁰⁷ This

¹⁰³ Zamfara State Shari'ah Penal Code Law, 2000, s. 127 (on zina).

¹⁰⁴ Jigawa State Shari'ah Penal Code Law, 2000, s. 131 (on sodomy)
<https://moj.jg.gov.ng/wp-content/uploads/2021/08/Chapter-S7-Shariah-Penal-Code-Law.pdf> [accessed 15th November 2025]

¹⁰⁵ International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, 999 U.N.T.S. 171 (entered into force 23 March 1976). Nigeria acceded on 29 July 1993.
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> [accessed 15th November 2025]

¹⁰⁶ *Ibid*, Articles 6(2) and 6(5).

¹⁰⁷ Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 36.

includes a lack of adequate state-funded legal representation for indigent defendants and convictions based on confessions allegedly obtained through torture.

Execution of Juvenile Offenders: The prohibition on executing persons who were under 18 at the time of the offence is an unambiguous rule of international law. Domestically, this is reinforced by Section 221(1) of the Child's Rights Act, 2003, which explicitly prohibits sentencing a "child" to death.¹⁰⁸ Despite these clear prohibitions, there have been historical concerns and documented cases of juveniles on death row.

The Death Row Phenomenon: A significant human rights issue is the excessive delay between sentencing and execution, with many convicts spending decades on death row. It is argued that this prolonged period of psychological anguish constitutes cruel, inhuman, or degrading treatment, thereby violating Article 7 of the ICCPR and Section 34 of the Nigerian Constitution (the right to human dignity).¹⁰⁹

3.5 Institutional Frameworks For Capital Punishment

The administration, oversight, and enforcement of the death penalty in Nigeria involve a complex interplay of bodies from all three branches of government, supplemented by statutory oversight agencies. The Legislature (the National Assembly and State Houses of Assembly) is responsible for enacting the statutes that prescribe the death penalty, such as the Criminal Code Act¹¹⁰ and the Robbery and Firearms Act.¹¹¹ The Judiciary (from the State High Courts to the

¹⁰⁸ Child's Rights Act, 2003, Cap. C50, Laws of the Federation of Nigeria, 2004, s. 221(1).
<https://lawsofnigeria.placng.org/laws/C50.pdf><accessed 15th November 2025>

¹⁰⁹ This argument is often referred to as the "death row phenomenon," a legal concept established in persuasive non-Nigerian judicial decisions like *Pratt v Attorney-General for Jamaica* [1994] 2 AC 1.
¹¹⁰ Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria, 2004.
<https://lawsofnigeria.placng.org/laws/C38.pdf><accessed 15th November 2025>

¹¹¹ Robbery and Firearms (Special Provisions) Act, Cap. R11, Laws of the Federation of Nigeria, 2004. "<https://lawsofnigeria.placng.org/laws/R11.pdf>"<accessed 15th November 2025>

Supreme Court) adjudicates capital cases and imposes sentences, theoretically bound by the constitutional guarantee of a fair trial.¹¹²

The Executive branch holds the most diverse roles: the Nigeria Police Force and the Ministry of Justice (via the Director of Public Prosecutions) investigate and prosecute offences. The President and State Governors hold the ultimate power of clemency, acting on the advice of the Advisory Council on the Prerogative of Mercy.¹¹³ Finally, the Nigerian Correctional Service is the executive agency tasked with the custody of condemned prisoners and the eventual enforcement of the execution warrant.¹¹⁴ Oversight is provided by statutory bodies like the National Human Rights Commission (NHRC)¹¹⁵ and the Legal Aid Council of Nigeria, which monitors the human rights compliance and legal representation of those on death row.

3.5.1 The Role of the Judiciary and Courts

The judiciary is the central institution for the trial and adjudication of capital offences in Nigeria. This function is rooted in the constitutional right to a fair hearing and the separation of powers.¹¹⁶

The State High Courts serve as the primary trial courts for most capital offences, including murder and armed robbery, as they possess general jurisdiction over criminal matters within the state.¹¹⁷ The Federal High Court retains jurisdiction over federal-level capital offences,

¹¹² Constitution of the Federal Republic of Nigeria, 1999 (as amended), s.36.
<https://placng.org/legist/the-constitution-of-the-federal-republic-of-nigeria-1999/> <accessed 15th November 2025>

¹¹³ *Ibid*, ss. 175 and 212 (detailing the Prerogative of Mercy for the President and State Governors, respectively).

¹¹⁴ Nigerian Correctional Service Act, 2019.
<https://www.lawcer.org/wp-content/uploads/2020/01/NIGERIAN-CORRECTIONAL-SERVICE-ACT-2019> <accessed 15th November 2025>

¹¹⁵ National Human Rights Commission Act, 1995 (as amended).
<https://www.nigeria-law.org/National%20Human%20Rights%20Commission%20Act.htm> <accessed 15th November 2025>

¹¹⁶ Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 36 (Right to a Fair Hearing)
<https://placng.org/legist/the-constitution-of-the-federal-republic-of-nigeria-1999/> <accessed 15th November 2025>

¹¹⁷ *Ibid*, s. 272 (Jurisdiction of State High Courts).

most notably treason. In the twelve northern states that have adopted Sharia penal law, the Sharia Courts have parallel jurisdiction to try Muslims for capital Hudud offences.¹¹⁸

The judiciary's role extends to crucial appellate oversight. The Court of Appeal and, ultimately, the Supreme Court of Nigeria are responsible for reviewing capital convictions. The Supreme Court's appellate jurisdiction is automatic in death penalty cases, meaning convicts have a constitutional right of appeal.¹¹⁹ This appellate process is intended to ensure that the strict procedural and evidentiary standards for capital convictions have been met.

In practice, however, this judicial framework faces severe challenges. Human rights bodies and legal scholars consistently raise concerns about the quality of justice in capital cases, citing issues such as inadequate legal representation for indigent defendants, convictions based on confessions obtained through torture, and the prolonged delays in the appellate process, which contribute to the "death row phenomenon."¹²⁰

3.5.2 Law Enforcement, Executive Power and Custodial Institutions

The executive branch is responsible for the investigation, prosecution, and custodial management of capital offences, forming the practical machinery of the death penalty's administration.

¹¹⁸ The Jigawa State Shari'ah Court (Administration of Justice and Certain Consequential Changes) Law, which establishes the jurisdiction of Sharia Courts <https://moj.jg.gov.ng/wp-content/uploads/2021/08/Chapter-S4-Shariah-Court-Administration-of-Justice-and-Certain-Consequential-ChangesLaw.pdf> [accessed 15th November 2025]

¹¹⁹ Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 233(2)(d). This section grants an appeal "as of right" in "decisions in any criminal proceedings in which any person has been sentenced to death... or in which the Court of Appeal has affirmed a sentence of death."

¹²⁰ Amnesty International, "Nigeria: Waiting for the Hangman," (2008). This report details systemic failures in the administration of justice for death row inmates. <https://www.amnesty.org/en/documents/AFR44/007/2008/en/> [accessed 15th November 2025]

Law Enforcement and Prosecution

The Nigeria Police Force is the principal agency tasked with the initial investigation of capital crimes.¹²¹ Its role is to gather evidence and apprehend suspects, forming the basis of the criminal case.

Following investigation, the Office of the Attorney-General (either of the Federation for federal crimes like treason, or of the State for state crimes like murder) assumes responsibility for prosecution.¹²² This is executed through the Ministry of Justice and the Director of Public Prosecutions (DPP), who determine whether to file a "capital charge" based on the evidence. The quality of this initial investigation and prosecution phase is a frequent subject of academic and human rights critique, often cited as a weak link in the fair administration of justice.¹²³

Custodial Management (Correctional Service)

Once a person is convicted and sentenced, or while awaiting trial, they are committed to the custody of the Nigerian Correctional Service (NCS), formerly known as the Nigerian Prison Service.¹²⁴ The NCS is responsible for managing "death row"—the facilities housing condemned prisoners. This role places the NCS at the center of debates regarding the human rights of condemned inmates, particularly concerning the "death row phenomenon" (prolonged incarceration), inadequate living conditions, and the psychological burden on prisoners awaiting execution.

¹²¹ The Nigeria Police Force is established by Section 214 of the 1999 Constitution, and its powers, including investigation of felonies, are detailed in the Police Act, 2020. <https://www.lawsfnigeria.placng.org/laws/N69.pdf><accessed 15th November 2025>

¹²² The prosecutorial powers of the Attorney-General are established in Sections 174 (Federal) and 211 (State) of the 1999 Constitution. <https://placng.org/legist/the-constitution-of-the-federal-republic-of-nigeria-1999/><accessed 15th November 2025>

¹²³ Oluyemi Akinseye-George, "Criminal Justice Reform in Nigeria: The Imperative of a National Policy," (2009), which discusses the systemic challenges in investigation and prosecution.

¹²⁴ The service was renamed and its mandate reformed by the Nigerian Correctional Service Act, 2019. <https://www.lawcer.org/wp-content/uploads/2020/01/NIGERIAN-CORRECTIONAL-SERVICE-ACT-2019.pdf><accessed 15th November 2025>

Executive Clemency: The Prerogative of Mercy

The final institutional control over the implementation of a death sentence rests with the executive branch through the Prerogative of Mercy. This power is constitutionally entrenched and bifurcated by Nigeria's federal structure.

For federal offences (e.g. treason), Section 175 of the 1999 Constitution vests this power in the President, who acts after consultation with the Council of State.¹²⁵ For state offences (e.g., murder, armed robbery), Section 212 vests the power in the State Governor, who acts after consultation with a state-level Advisory Council on the Prerogative of Mercy.¹²⁶ This power allows the executive to grant a full pardon, a 'respite' (a temporary stay of execution), or most commonly, "substitute a less severe form of punishment," effectively commuting the death sentence to life imprisonment.

3.5.3 Legislative Oversight and Reform

The legislature is the foundational body in the capital punishment framework, as it alone possesses the power to define capital offences. The National Assembly (Senate and House of Representatives) is empowered by the Constitution to enact laws for the federation.¹²⁷ This includes federal capital statutes with nationwide application, such as the Robbery and Firearms (Special Provisions) Act.¹²⁸

Concurrently, State Houses of Assembly have the constitutional power to enact criminal laws for their respective states. This power is the legal basis for the southern states' Criminal Codes and, significantly, was the authority used by twelve northern states to enact their Sharia Penal

¹²⁵ Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 175.
<https://placng.org/legist/the-constitution-of-the-federal-republic-of-nigeria-1999/><accessed 15th November 2025>

¹²⁶ *Ibid*, s. 212.

¹²⁷ *Ibid*, s. 4 (Legislative Powers).

¹²⁸ Robbery and Firearms (Special Provisions) Act, Cap. R11, Laws of the Federation of Nigeria, 2004.
<https://lawsofnigeria.placng.org/laws/R11.pdf><accessed 15th November 2025>

Codes, which expanded the list of capital offences to include Hudud crimes.¹²⁹ These legislative bodies also serve as the exclusive channel for reform, holding the power to debate and pass bills that could place a moratorium on executions or abolish the death penalty entirely.

3.5.4 Human Rights Bodies and Non-Governmental Organisations

The administration of capital punishment in Nigeria is subject to scrutiny from both statutory and non-governmental bodies. The National Human Rights Commission (NHRC), established by an Act of the National Assembly, is the official statutory body mandated to monitor and protect human rights.¹³⁰ Its powers include visiting prisons and detention centers, investigating alleged violations of the rights of death row inmates, and advising the government on its human rights obligations, including the push for a moratorium on executions.¹³¹

Alongside this state institution, non-governmental organisations (NGOs) play a critical role as independent monitors and advocates. International bodies, most notably Amnesty International, produce extensive reports that document the systemic failures in Nigeria's capital justice system, focusing on fair trial violations, the "death row phenomenon," and the disproportionate application of the death penalty on the poor. Domestic NGOs, such as the Legal Defence & Assistance Project (LEDAP), are also pivotal, providing pro bono legal representation to indigent death row inmates and campaigning for abolition.¹³²

¹²⁹ Jigawa State Shari'ah Penal Code Law, 2000. <https://moj.jg.gov.ng/wp-content/uploads/2021/08/Chapter-S7-Shariah-Penal-Code-Law.pdf> <accessed 15th November 2025>

¹³⁰ National Human Rights Commission Act, 1995 (as amended). <https://www.nigeria-law.org/National%20Human%20Rights%20Commission%20Act.htm> <accessed 15th November 2025>

¹³¹ National Human Rights Commission, "Press Release Issued By The Executive Secretary, National Human Rights Commission" (2018). This press release reiterates the NHRC's position on the moratorium and the human rights implications of death row conditions. <https://www.nigeriarights.gov.ng/nhrc-media/press-release/61-press-release-issued-by-the-executive-secretary-national-human-rights-commission.html> <accessed 15th November 2025>

¹³² Legal Defence & Assistance Project (LEDAP), "The Human Security Programme." This outlines their death penalty project, which includes campaigns for abolition and legal representation for capital defendants. <https://ledapnigeria.org/the-human-security-programme/> <accessed 15th November 2025>

3.5.5 Key Issues and Observations in the Application of Capital Punishment

While the Nigerian Supreme Court affirmed the constitutionality of the death penalty in *Onuoha Kalu v. The State* (1998), its practical application is fraught with profound legal and human rights challenges.¹³³

A primary concern is the systemic failure to guarantee fair trial standards, a prerequisite under both the Nigerian Constitution and international law. Reports from human rights organizations consistently find that a majority of death row inmates are indigent and lack effective legal representation at trial. This is exacerbated by the use of mandatory death sentences, particularly for offences like armed robbery, which prevent judges from considering mitigating circumstances and are seen by international bodies as a violation of fair trial norms.¹³⁴

Furthermore, Nigeria's application of the death penalty is marked by significant contradictions. Despite the Child's Rights Act, 2003, which forbids capital punishment for offences committed by persons under 18, and Nigeria's obligations under the ICCPR, reports have documented juvenile offenders on death row.¹³⁵ The "death row phenomenon"—where inmates spend decades in severe conditions awaiting execution—is also cited as constituting cruel, inhuman, or degrading treatment, potentially violating Section 34 of the 1999 Constitution (Right to human dignity).¹³⁶

¹³³ *Onuoha Kalu v The State* [1998] 13 NWLR (Pt. 583) 531.

¹³⁴ The Advocates for Human Rights, "Nigeria Stakeholder Report for the United Nations Universal Periodic Review: The Death Penalty," (2023). This report highlights that mandatory death sentences violate international law by removing judicial discretion. <https://www.theadvocatesforhumanrights.org/Res/AHR%20WCADP%20ASF%20Nigeria%20UPR%20Final.pdf><accessed 15th November 2025>

¹³⁵ Child's Rights Act, 2003, Cap. C50, Laws of the Federation of Nigeria, 2004, s. 221(1). This is Nigeria's domestication of the UN Convention on the Rights of the Child. <https://lawsofnigeria.placng.org/laws/C50.pdf><accessed 15th November 2025>

¹³⁶ This argument against prolonged detention on death row is a key tenet of international human rights jurisprudence, as explored in "Death Row Phenomenon and Methods of Execution: A Repugnant Violation of the Dignity of Mankind," *African Journal of Law and Human Rights* (2007). <https://journals.ezenwaohaetorc.org/index.php/AJLHR/article/download/2171/2215><accessed 15th November 2025>

There is also significant legal variation within the federation. The expansion of Sharia penal codes in twelve northern states introduced capital offences not found in the secular Criminal or Penal Codes, such as zina (adultery) and sodomy.

Finally, a stark disconnect exists between sentencing and enforcement. While courts continue to impose hundreds of death sentences, actual executions are rare, creating a de facto moratorium. This has been reinforced by official reform efforts, such as the 2004 National Study Group on the Death Penalty, which recommended a moratorium, though this has yet to be formally and permanently legislated.¹³⁷ This video explains the call from stakeholders to end the death penalty in Nigeria, highlighting the high number of inmates currently on death row.¹³⁸

¹³⁷ Amnesty International, "UN Resolution on Moratorium on the Use of the Death Penalty: Call on Nigeria to abstain," (2008). This document references the 2004 National Study Group's recommendation. <https://www.amnesty.org/es/wp-content/uploads/2021/07/afr440282008en.pdf> <accessed 15th November 2025>

¹³⁸ <https://youtu.be/ftRlcKIA0kk?si=Gkr7QdSAMdlwKo0K> <accessed 15th November 2025>

CHAPTER FOUR

THE EFFECTS OF CAPITAL PUNISHMENT IN NIGERIA AND COMPARATIVE ANALYSIS

4.1 Introduction

The preceding chapters have established the comprehensive and multifaceted legal architecture that permits capital punishment in Nigeria. This framework is anchored in the 1999 Constitution, which, in Section 33(1), provides a specific exception to the fundamental right to life, allowing for a sentence "in execution of the sentence of a court... of which he has been found guilty." This constitutional provision, which was affirmed by the Supreme Court in *Onuoha Kalu v. The State* provides the de jure basis for the death penalty.

This constitutional allowance is given statutory force through a mosaic of federal and state laws, including the Criminal Code (murder), the Penal Code (culpable homicide), the stringent Robbery and Firearms (Special Provisions) Act, and the controversial Sharia Penal Codes of twelve northern states.

However, the mere existence of this legal framework does not resolve the profound controversies surrounding its application. This chapter now moves beyond a descriptive legal analysis to a critical examination of the de facto effects and profound human rights implications of retaining capital punishment.

This chapter will scrutinize the primary justification for the penalty and its purported deterrent effect by contrasting it with the realities of a criminal justice system beset by systemic challenges. This chapter will also analyze the reality of the death penalty in Nigeria and draw a critical link to various jurisdictions around the world and make comparison to the reality of capital punishment in the international community.

4.2 Effects of Capital Punishment in Nigeria

Capital punishment has several effects on Nigeria and Nigerians. These effects can vary from Human Rights effects, deterrence and Criminological impact, societal and systemic impact and judicial fairness.

4.2.1 Human Rights Effects

The administration of capital punishment in Nigeria operates as a profound legal paradox, characterized by an aggressive retention of death penalty statutes alongside a longstanding hesitation to enforce them. The Nigerian legal framework imposes the death penalty for a wide array of offenses, ranging from murder and armed robbery to treason and kidnapping, under both secular criminal codes and Sharia law. This has resulted in a swelling death row population that reached nearly 3,700 individuals by early 2025, with courts handing down hundreds of new sentences annually. Yet, despite this judicial enthusiasm, the country has observed a "de facto moratorium" on executions since 2016, largely due to the reluctance of state governors to sign death warrants. This disconnect creates a harrowing limbo where thousands of inmates are sentenced to death in name but effectively serve indefinite prison terms under the constant, agonizing shadow of the gallows.¹³⁹

4.2.2 Psychological Effects and Secondary Victims

For those condemned to this uncertain fate, the punishment extends far beyond the physical confinement of the cell. Inmates frequently suffer from "death row syndrome," a form of psychological torture characterized by severe anxiety, cognitive decline, and hallucinations resulting from prolonged isolation and the looming threat of execution.¹⁴⁰ This trauma is

¹³⁹ Thenigerialawyer. Life On Death Row In Nigeria: The Growing Crisis Of Prolonged Sentences And Trauma. <https://thenigerialawyer.com/life-on-death-row-in-nigeria-the-growing-crisis-of-prolonged-sentences-and-trauma/> <accessed 23rd November 2025>

¹⁴⁰ Reprieve. Death Row Phenomenon: The Psychological Impact of Living in the Shadow of Execution.

exacerbated by the squalid conditions of Nigerian prisons, where overcrowding and lack of sanitation are endemic, and where inmates are sometimes dehumanized by being forced to maintain the very gallows designed to kill them. The ripple effects of this trauma extend to the families of the condemned, often termed "secondary victims," who suffer from "ambiguous loss"; a state of frozen grief where they cannot mourn a living relative nor hope for their future. This impact is notably gendered, as a significant majority of women on death row are mothers, meaning their sentencing fractures families and exposes children to deep social stigma and economic hardship.¹⁴¹

4.2.3 Deterrence and Criminological Impact

The moral legitimacy of capital punishment in Nigeria is further eroded by systemic failures that render fair trials largely illusory for the poor and vulnerable. Legal scholars and human rights investigations have documented a justice system plagued by procedural flaws, where convictions are frequently secured through forced confessions extracted via torture rather than forensic evidence.¹⁴² The pervasive use of mandatory death sentences strips judges of discretion, preventing them from considering mitigating factors and leading to a rigid application of the law that violates the right to a fair hearing, as highlighted in Supreme Court jurisprudence. Furthermore, evidence overwhelmingly suggests that this harsh punitive model fails to deter crime; rates of kidnapping and armed robbery have continued to rise despite the proliferation of death sentences. Consequently, the death penalty serves less as a tool for public

<https://reprieve.org/uk/2016/10/11/death-row-phenomenon-psychological-impact-shadow-execution/> <accessed 23rd November 2025>

¹⁴¹ The Guardian Nigeria. 70% of women on death row in Nigeria are mothers.

<https://guardian.ng/news/nigeria/national/70-of-women-on-death-row-in-nigeria-are-mothers-study/> <accessed 23rd November 2025>

¹⁴² HumAngle Media. Surviving Death Row: Anguish of Nigerians Jailed for Decades After Wrongful Convictions <https://humanglemedia.com/surviving-death-row-anguish-of-nigerians-jailed-for-decades-after-wrongful-convictions/> <accessed 23rd November 2025>

safety and more as a source of systemic injustice, prompting urgent calls from criminologists and international bodies for immediate reform and abolition.¹⁴³

4.3 Comparative Analysis

This section aims to analyze the historical and contemporary trends of capital offences and the death penalty in other jurisdictions around the world. Particularly focusing on the United States and the United Kingdom.

4.3.1 Capital Offenses and Capital Punishment in the United States

The concept of a capital offense in the United States represents the most severe classification of crime within the American legal system, designating specific violations for which the death penalty may be imposed as a punishment. While the application of this penalty is primarily associated with the taking of human life, the legal framework surrounding it is a complex interplay of federal statutes, state laws, and evolving Supreme Court jurisprudence. Historically, the definition of what constitutes a capital crime has shifted dramatically. In the contemporary era, the trend has been a significant narrowing of eligible offenses, with both courts and legislatures moving toward restricting the ultimate punishment to only the "worst of the worst" cases.¹⁴⁴ This shift reflects a broader societal and legal evolution regarding the morality, constitutionality, and efficacy of state-sponsored execution.¹⁴⁵

¹⁴³ K. Karimunda *The Death Penalty in Africa: The Path Towards Abolition*.
<https://cljbooks.rutgers.edu/books/the-death-penalty-in-africa/> <accessed 23rd November 2025>

¹⁴⁴ https://en.wikipedia.org/wiki/Capital_punishment_in_the_United_States <accessed 23rd of November 2025>

¹⁴⁵ <https://www.britannica.com/topic/capital-punishment-in-the-United-States> <accessed 23rd of November 2025>

The Scope of Capital Offenses Under Federal Law in The United States

At the federal level, the criteria for capital offenses extend beyond simple homicide, encompassing crimes that threaten the core security of the nation or involve egregious violence on a massive scale. While first-degree murder remains the primary vehicle for capital charges particularly when accompanied by aggravating factors such as the murder of a federal official, killing during a kidnapping, or murder for hire, the federal government retains the authority to seek the death penalty for non-homicide offenses. These rare but significant exceptions include treason and espionage, crimes viewed as existential threats to the state.¹⁴⁶ Furthermore, following the rise of global and domestic security threats, federal laws have been expanded to include terrorism-related offenses that result in death, as well as large-scale drug trafficking enterprises where the distribution of controlled substances leads to fatal outcomes.¹⁴⁷ The federal scope also covers specific acts of extreme violence, such as death resulting from aircraft piracy, the mailing of explosive devices, or the destruction of government property resulting in a loss of life.¹⁴⁸ These statutes illustrate that while the federal government reserves the death penalty largely for homicides, it maintains the legal machinery to punish crimes that strike at the safety of the collective populace or the integrity of government operations.

State-Level Distinctions and Aggravating Factors

Parallel to the federal system, individual states possess their own criminal codes defining capital punishment, creating a patchwork of standards across the country. Almost universally, states that retain the death penalty restrict it to cases of "capital murder" or "aggravated murder." This distinction is crucial; a conviction for simple murder is rarely sufficient to

¹⁴⁶ <https://www.justice.gov/archives/jm/criminal-resource-manual-71-capital-eligible-statutes->
accessed 23rd of November 2025>

¹⁴⁷ <https://www.congress.gov/crs-product/R42095> <accessed 23rd of November 2025>

¹⁴⁸ <https://deathpenaltyinfo.org/stories/federal-laws-providing-death-penalty> <accessed 23rd of November 2025>

warrant a death sentence. Instead, the prosecution must demonstrate specific aggravating circumstances that elevate the severity of the crime. These factors often include the murder of vulnerable populations such as children, homicide committed during the commission of another felony like sexual assault or robbery, the killing of law enforcement officers, or crimes involving multiple victims.¹⁴⁹ However, this area of law is not static. Recent legislative movements, such as those seen in Florida, have sought to expand the boundaries of capital punishment to include aggravated non-homicide child sexual abuse. This represents a significant and controversial challenge to existing legal precedents that have historically barred the death penalty for crimes where the victim did not die, suggesting a potential conflict between evolving state legislations and established Supreme Court rulings.¹⁵⁰

Historical Context and the Shift in Public Sentiment

To understand the current state of capital punishment, one must examine its historical trajectory, which moves from broad application to careful restriction. In the colonial era and the early years of the United States, capital punishment was a common penalty for a wide array of offenses, including property crimes like robbery, moral offenses like rape, and various non-lethal acts. Executions were often public spectacles intended to deter crime through fear. However, as the nation matured, a gradual reform movement took hold, leading to the abolition of the death penalty for most non-homicide offenses at the state level.¹⁵¹ Public opinion has also played a volatile role in this history; support for the death penalty reached its zenith around 1994, coinciding with a tough on crime political era, but has steadily declined in the decades since. This shift in public sentiment has been mirrored by a sharp drop in new death sentences

¹⁴⁹ <https://study.com/learn/lesson/capital-crime-examples-statistics.html> <accessed 23rd of November 2025>

¹⁵⁰ <https://deathpenaltyinfo.org/news/2025-roundup-of-death-penalty-related-legislation> <accessed 23rd of November 2025>

¹⁵¹ <https://www.britannica.com/procon/death-penalty-debate/U-S-New-Death-Sentences-and-Executions-by-Year> <accessed 23rd of November 2025>

and executions since the late 1990s. Today, the practice is increasingly geographically isolated, with most states either abolishing the penalty entirely or observing a de facto moratorium, while federal executions remain historically rare events.¹⁵²

The Role of the Supreme Court in Shaping Capital Law

The most defining feature of modern U.S. capital punishment law is the intervention of the United States Supreme Court, which has acted as the primary regulator of the death penalty's constitutionality. This judicial oversight began in earnest with the landmark 1972 case *Furman v. Georgia*.¹⁵³ In a fractured opinion, the Court ruled that the death penalty, as it was then being applied, constituted "cruel and unusual punishment" in violation of the Eighth Amendment. The justices argued that the statutes were arbitrary, akin to being struck by lightning, and often discriminatory in their application. This ruling resulted in a nationwide moratorium on executions, forcing states to rewrite their laws.

The moratorium ended with the 1976 decision in *Gregg v. Georgia*.¹⁵⁴ The Court held that the death penalty was not inherently unconstitutional provided that the new laws included safeguards to ensure fairness and consistency. These safeguards typically included bifurcated trials, where the determination of guilt and the sentencing are conducted in two separate phases and the requirement that juries consider both aggravating and mitigating factors before imposing the death penalty.

In the years following *Gregg*, the Court continued to narrow the scope of who could be executed, guided by the "evolving standards of decency that mark the progress of a maturing society." In *Atkins v. Virginia* (2002), the Court prohibited the execution of individuals with

¹⁵² <https://deathpenaltyinfo.org/resources/high-school/about-the-death-penalty/history-of-the-death-penalty> <accessed 23rd of November 2025>

¹⁵³ *William Henry Furman v State of Georgia* 408 U.S. 238 (more) 92 S. Ct. 2726; 33 L. Ed. 2d 346; 1972 U.S. LEXIS 169 https://en.wikipedia.org/wiki/Furman_v._Georgia <accessed 23rd of November 2025>

¹⁵⁴ *Gregg v Georgia*, 428 U.S. 153 (1976) <https://supreme.justia.com/cases/federal/us/428/153/> <accessed 23rd of November 2025>

intellectual disabilities, recognizing their diminished culpability. Three years later, in *Roper v. Simmons* (2005), the Court banned the death penalty for offenders who were under the age of 18 at the time of the crime, citing scientific evidence regarding adolescent brain development and impulse control. Finally, in *Kennedy v. Louisiana* (2008), the Court struck down statutes that allowed for the death penalty in cases of child rape where the victim did not die, reinforcing the principle that the ultimate punishment should generally be reserved for crimes involving the loss of life. These rulings collectively demonstrate a judicial commitment to limiting capital punishment to the most extreme offenders and offenses, insulating vulnerable populations from the state's harshest penalty.¹⁵⁵

The Fractured State of Capital Punishment in the Modern United States

The landscape of capital punishment in the United States has undergone a profound transformation by the year 2025, revealing a legal system that is deeply divided by geography, politics, and moral philosophy. While the death penalty remains technically legal in roughly half of the country, between 24 and 27 states depending on the status of various moratoriums, the actual practice of execution has become a rare and geographically isolated phenomenon. The modern era is characterized not by a unified national standard, but by a stark polarization where the vast majority of the nation has moved away from state-sponsored killing, leaving a small handful of states in the American South to drive a sudden and controversial spike in executions. In 2025, only about ten states carried out executions, yet the total number of people put to death reached levels not seen since 2012.¹⁵⁶ This resurgence was not a national trend but

¹⁵⁵ *Roper v. Simmons*, 543 U.S. 551 (2005). *Kennedy v. Louisiana*, 554 U.S. 407 (2008), *Atkins v. Virginia* is 536 U.S. 304 (2002). <https://capitalpunishmentincontext.org/resources/casesummaries> <accessed 23rd of November 2025>

¹⁵⁶ <https://www.pbs.org/newshour/nation/the-u-s-is-executing-more-people-this-year-and-florida-is-leading-the-way> <accessed 23rd of November 2025>

rather the result of aggressive scheduling in specific jurisdictions, creating a reality where the likelihood of execution depends almost entirely on the state in which a crime is committed.¹⁵⁷ One of the most significant and harrowing developments in this modern era concerns the methods by which the state takes a life. For decades, lethal injection was the standard, projected as a clinical and humane alternative to the electric chair or gas chamber. However, persistent refusal by pharmaceutical companies to supply drugs for executions has forced states to improvise, leading to a diversification of execution methods that recalls earlier centuries.¹⁵⁸ While lethal injection remained the primary method in 2025, accounting for 36 of the 44 executions, supply shortages have compelled states like Florida, Alabama, South Carolina, Utah, and Mississippi to authorize and utilize alternative methods. This shift was vividly illustrated in Alabama, which garnered international attention for carrying out multiple executions using nitrogen hypoxia (a method involving the replacement of oxygen with nitrogen gas to induce death). The first use of this method on Kenneth Eugene Smith in January 2024 marked a historic and contentious pivot in capital punishment technology.¹⁵⁹ Similarly, South Carolina revived the firing squad, executing Brad Sigmon for a double murder, further underscoring the lengths to which active death penalty states are willing to go to bypass pharmaceutical blockades.¹⁶⁰

The geographical concentration of these executions has created a two-tiered justice system. Florida emerged as the undeniable epicenter of capital punishment in 2025, outpacing every other state with a staggering 14 to 17 executions in a single year. This solidified Florida's status as an outlier, aggressively clearing its death row while other states remained dormant. The

¹⁵⁷ https://en.wikipedia.org/wiki/Capital_punishment_in_the_United_States <accessed 23rd of November 2025>

¹⁵⁸ <https://deathpenaltyinfo.org/executions/methods-of-execution> <accessed 23rd of November 2025>

¹⁵⁹ *Smith v Hamm*, No. 23A688 (U.S. Jan. 25, 2024)
https://www.supremecourt.gov/opinions/23pdf/23a688_ap6c.pdf <accessed 23rd of November 2025>

¹⁶⁰ *Sigmon v Stirling*, 956 F.3d 183 (4th Cir. 2020)
<https://www.google.com/search?q=https://casetext.com/case/sigmon-v-stirling-4> <accessed 23rd of November 2025>

execution of individuals such as Norman Mearle Grim Jr, condemned for the rape and murder of Cynthia Campbell, highlighted the state's renewed commitment to the practice.¹⁶¹ Outside of Florida, the machinery of death was active primarily in Texas, Alabama, and South Carolina, which each conducted between four and five executions. This regional cluster in the South contrasts sharply with the rest of the nation. For example, while Roy Lee Ward was executed in Indiana for the 2001 murder and rape of Stacy Payne,¹⁶² such events have become anomalies in the Midwest and virtually non-existent in the Northeast and West Coast. The result is a fractured map where the definition of justice varies wildly across state lines.¹⁶³

Counterbalancing this surge in Southern executions is a significant wave of commutations and executive clemency that suggests a growing discomfort with the death penalty at the highest levels of government. A defining moment occurred in December 2024, when President Biden commuted the death sentences of 37 federal inmates to life imprisonment without parole.¹⁶⁴ This sweeping action effectively cleared the federal death row, signaling a profound policy shift away from federal executions and sparing dozens from the lethal injection chamber. This federal move mirrors actions at the state level, where governors in states like California, Oregon, and Pennsylvania have maintained long-standing moratoriums. In these jurisdictions, death sentences are effectively theoretical; they are pronounced but rarely, if ever, carried out. The reasons for this retreat from the death penalty are multifaceted, ranging from humanitarian concerns and doubts about the guilt of the condemned to statistical evidence of racial bias and the exorbitant costs of capital litigation. As a result, while Florida and Texas accelerate

¹⁶¹ *Grim v State*, 841 So. 2d 455 (Fla. 2003) <https://law.justia.com/cases/florida/supreme-court/2003/sc01-256.html> <accessed 23rd of November 2025>

¹⁶² *Ward v State*, 903 N.E.2d 946 (Ind. 2009) <https://law.justia.com/cases/indiana/supreme-court/2009/06260902bd.html> <accessed 23rd of November 2025>

¹⁶³ <https://www.corrections1.com/capital-punishment/u-s-executions-climb-to-35-in-2025-with-several-more-planned> <accessed 23rd of November 2025>

¹⁶⁴ <https://www.aclumaine.org/press-releases/aclu-applauds-federal-death-row-commutations/> <accessed 23rd of November 2025>

executions, a growing number of states are slowly dismantling the machinery of death through disuse and executive intervention.¹⁶⁵

Ultimately, the state of capital punishment in 2025 is one of extreme polarization and unpredictability. The system is characterized by a simultaneous acceleration and deceleration: a rapid increase in executions in a few specific states using novel and sometimes controversial methods, juxtaposed against a widespread pause or abolition in the rest of the country. The contrast between a federal government clearing its death row and a state government like Florida's executing people at a record pace exposes a fundamental lack of consensus on human rights and criminal justice in America. With legal experts predicting a continuing decline in the broader usage of the death penalty, the practice is increasingly viewed not as a standard tool of justice, but as a peculiar institution of the American South, subject to intense scrutiny and evolving legal challenges.¹⁶⁶

4.3.2 Capital Punishment in The United Kingdom

The legal landscape of the United Kingdom stands as a definitive example of a modern democracy that has completely severed ties with state-sponsored execution. As of 2025, capital punishment is not merely suspended or rare; it is comprehensively abolished across all legal frameworks, meaning the British state possesses no authority to execute a human being for any crime, regardless of its severity.¹⁶⁷ This absolute prohibition covers the entirety of the United Kingdom i.e. England, Scotland, Wales, and Northern Ireland and extends to all potential offenses, including treason, espionage, and crimes committed within the military. Consequently, the concept of a "capital offense" has been entirely erased from the British

¹⁶⁵ <https://www.fwd.us/news/early-outcomes-federal-commutations-primed-to-make-positive-impact/> <accessed 23rd of November 2025>

¹⁶⁶ https://www.oas.org/en/iachr/jsForm/?File=%2Fen%2Fiachr%2Fmedia_center%2Fpreleases%2F2025%2F002.asp <accessed 23rd of November 2025>

¹⁶⁷ Parliamentarians for Global Action. *United Kingdom and the International Abolition of the Death Penalty*. <https://www.pgaction.org/ilhr/adp/gbr.html> <accessed 23rd of November 2025>

statute books, replaced by a penal system that relies on imprisonment as the ultimate sanction.¹⁶⁸

The transition away from the death penalty in Britain was a gradual legislative process rather than a sudden revolution, rooted in a shifting moral consensus that began in the mid-20th century. The pivotal moment occurred with the passage of the Murder (Abolition of Death Penalty) Act 1965, which suspended capital punishment for murder in Great Britain for a trial period of five years. This temporary measure was made permanent in 1969, effectively ending the practice for civil crimes.¹⁶⁹ However, vestiges of the death penalty remained in theory for specific, exceptional crimes such as treason and piracy with violence until relatively recently. These final technicalities were swept away in 1998 when the Crime and Disorder Act abolished the death penalty for treason and piracy, and the ratification of the European Convention on Human Rights (specifically Protocol 13) legally bound the UK to prohibit the death penalty in all circumstances, including during times of war. This cemented the UK's status as a fully abolitionist state, ensuring that the last executions, which took place in 1964, remain a closed chapter of history.

In the absence of the death penalty, the British justice system utilizes life imprisonment as the maximum penalty for the most serious offenders.¹⁷⁰ It is a common misconception that "life" in British law always equates to a specific number of years; while many offenders are released on license after serving a minimum term set by a judge, the system maintains a mechanism for permanent incarceration. For the most heinous crimes such as multiple murders, terrorism resulting in mass casualties, or the abduction and murder of children, judges can impose a

¹⁶⁸ *British Institute of Human Rights. The Abolition of the Death Penalty.* <https://www.bihhr.org.uk/get-informed/what-rights-do-i-have/abolition-of-the-death-penalty> <accessed 23rd of November 2025>

¹⁶⁹ *Legislation.gov.uk. Murder (Abolition of Death Penalty) Act 1965.* <https://www.legislation.gov.uk/ukpga> <accessed 23rd November 2025>

¹⁷⁰ *Capital punishment in the United Kingdom.* https://en.wikipedia.org/wiki/Capital_punishment_in_the_United_Kingdom <accessed 23rd of November 2025>

whole life order. This sentence means exactly what it implies: the offender will never be released and will die in prison, barring exceptional compassionate grounds. This sentencing structure allows the state to incapacitate dangerous individuals and deliver severe retribution without resorting to execution, a standard that has been applied in recent high-profile terrorism and murder cases.¹⁷¹

Despite the legal finality of abolition, the topic remains a point of low-simmering public debate, revealing a disconnect between penal policy and public sentiment.¹⁷² Recent surveys conducted in 2025 suggest that roughly half of the British public retains an appetite for capital punishment in specific, extreme circumstances, such as terrorism or child murder.¹⁷³ However, this public sentiment has not translated into legislative action. The political consensus in Westminster remains staunchly opposed to reinstatement, and all parliamentary attempts to revive the debate have been consistently defeated. The prevailing legal view focuses on the risks of miscarriage of justice, evidenced by historical wrongful hangings and the moral argument that the state should not hold the power of life and death over its citizens. Furthermore, the UK has integrated abolitionism into its foreign policy, positioning itself as a global leader that actively discourages other nations from using the death penalty and refuses to provide assistance in international cases where execution is a likely outcome.¹⁷⁴

Today, the United Kingdom operates a criminal justice system entirely largely focused on custodial sentencing, rehabilitation, and public protection rather than lethal retribution. No cases have involved the death penalty in Britain for decades, and modern legislative

¹⁷¹ High-profile recent murder or terrorism cases (for example London Bridge attacks, Manchester Arena bombing) have led to life sentences or “whole life orders” but never death sentences.

¹⁷² *The Death Penalty Project. (2015). 50 Years on: The Abolition of the Death Penalty in Great Britain.* <https://www.deathpenaltyproject.org/wp-content/uploads/2017/12/DPP-50-Years-on-pp1-68-1.pdf> <accessed 23rd of November 2025>

¹⁷³ *Do Britons support the return of corporal and capital punishment?* <https://yougov.co.uk/society/articles/53343-do-britons-support-the-return-of-corporal-and-capital-punishment> <accessed 23rd November 2025>

¹⁷⁴ University of Birmingham. *Capital Punishment in the UK.* <https://www.birmingham.ac.uk/research/perspective/capital-punishment-malkani> accessed 23rd of November 2025>

developments, such as the Sentencing Bill 2025, continue to refine the management of serious offenders through imprisonment rather than execution.¹⁷⁵ The UK's stance serves as a counterweight to retentionist nations, demonstrating that a justice system can effectively manage even the most dangerous threats to society without compromising the fundamental human right to life. The abolition of the death penalty is therefore not just a statute in UK law, but a foundational principle of its modern constitutional identity.

4.3.3 Capital Punishment in Nigeria: Retentionist Laws and the Reality of Moratorium

The status of capital punishment in Nigeria represents a profound contradiction within the nation's legal and judicial framework. On paper, Nigeria stands as a staunchly retentionist state, with a constitution and penal code that mandate the death penalty for a wide array of offenses ranging from homicide to treason. Courts frequently hand down death sentences, contributing to a massive and swelling death row population that exceeds 3,500 individuals (one of the largest on the African continent). Yet, in practice, the executioner's hand has been stayed for nearly a decade, with no officially sanctioned judicial execution recorded since December 2016. This creates a "de facto moratorium," a state of suspended animation where the machinery of death continues to churn out condemnations, but the final act of state killing remains largely paused. This dissonance between the letter of the law and its actual enforcement reveals deep systemic challenges, including judicial inconsistency, human rights concerns, and the tension between secular statutes and religious legal codes in the country's diverse federal structure.¹⁷⁶

¹⁷⁵ Legislation.gov.uk. The Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2025. <https://www.legislation.gov.uk/ukxi/2025/60/made> <accessed 23rd of November 2025>

¹⁷⁶ The Advocates for Human Rights. Nigeria: Death Penalty. https://theadvocatesforhumanrights.org/International_Submissions/A/Index?id=619 <accessed 23rd of November 2025>

The Legal Framework of Capital Offenses

Nigerian jurisprudence provides for capital punishment under both the Criminal Code (applicable in the South) and the Penal Code (applicable in the North). The list of capital offenses is extensive and reflects both colonial legacies and contemporary security concerns. Primary among these are murder, armed robbery, and treason. However, the scope of capital punishment extends significantly further under specific legislative acts. For instance, the Robbery and Firearms (Special Provisions) Act mandates death for armed robbery, a provision that courts have frequently applied. Furthermore, in the twelve northern states that implement Sharia law, capital punishment is prescribed for moral and religious offenses, including adultery (zina), sodomy, incest, and even witchcraft or "juju." This dual legal system complicates the national application of the death penalty, as behaviors decriminalized or treated lightly in one region may warrant execution in another.

A significant and controversial dimension of Nigeria's capital regime is the mandatory nature of the death sentence for certain crimes. The Supreme Court's decision in *Onuoha Kalu v. The State* (1998) affirmed the constitutionality of the death penalty, ruling that the right to life is not absolute and can be forfeited under due process of law.¹⁷⁷ However, this ruling also reinforced the "mandatory death penalty" doctrine, which strips judges of discretion in sentencing for specific offenses like murder and armed robbery. Legal scholars and human rights advocates argue that this mandatory imposition violates the principle of fair hearing and individualised sentencing, effectively turning judges into rubber stamps for the legislature. The rigidity of this system means that once a conviction is secured under statutes like the Robbery and Firearms Act, the court has no option but to pronounce death, regardless of mitigating circumstances.

¹⁷⁷ *Onuoha Kalu v The State* (1998) 13 NWLR (Pt. 583) 531

Judicial Practice and Recent High-Profile Sentencing

Despite the statutory mandates, recent judicial trends show signs of hesitation and evolving standards, particularly in high-profile political cases. A landmark example occurred in November 2025, when the Federal High Court in Abuja adjudicated the case of Nnamdi Kanu, the leader of the Indigenous People of Biafra (IPOB). Kanu faced terrorism-related charges under the Terrorism (Prevention) Amendment Act, 2013, a statute that prescribes the death penalty for acts of terrorism resulting in death or serious instability. The prosecution aggressively sought the maximum penalty. However, in a move that surprised many observers, the presiding judge exercised judicial discretion to sentence Kanu to life imprisonment instead of death. The court cited "mercy" and adherence to "international norms" as the basis for this commutation, effectively bypassing the mandatory language of the statute. This ruling highlights a growing judicial discomfort with the finality of capital punishment, even in cases involving serious threats to national security.¹⁷⁸

This judicial caution, however, is not uniform. In lower courts and state high courts, death sentences continue to be handed down with regularity. The disconnect between the reluctance to execute and the readiness to sentence creates a bloated death row system characterized by extreme congestion and inhumane conditions. Inmates often spend decades in "agony and suspense," a phenomenon widely recognized in international law as a form of torture, (the death row phenomenon). While the executive branch (state governors) holds the power to sign death warrants, political reluctance and international pressure have led to a stalling of executions, leaving thousands in legal limbo.¹⁷⁹

¹⁷⁸ Premium Times. (2025). Court sentences Nnamdi Kanu to life imprisonment for terrorism. <https://www.premiumtimesng.com/news/headlines/837002-updated-court-sentences-nnamdi-kanu-to-life-imprisonment-for-terrorism.html> <accessed 23rd of November 2025>

¹⁷⁹ The Guardian Nigeria. ASF France renews call for abolition of death penalty in Nigeria. <https://guardian.ng/news/nigeria/metro/asf-france-renews-call-for-abolition-of-death-penalty-in-nigeria/> <accessed 23rd of November 2025>

Challenges in the Appellate Process and Extrajudicial Concerns

The appellate process in Nigeria is intended to serve as a safeguard against wrongful execution, yet it is fraught with systemic weaknesses. The "mandatory" nature of sentences under laws like the Robbery and Firearms Act often precludes meaningful appeals against the sentence itself; the appeal is typically limited to the conviction. If the conviction is upheld, the death sentence stands automatically. This legal straitjacket was critiqued in *Onuoha Kalu v. The State*, where the court grappled with the constitutionality of a penalty that allows for no mitigation.¹⁸⁰ Furthermore, there are alarming reports of executions or attempted executions proceeding while appeals are still pending. This is particularly acute in the context of Sharia courts in the North, where procedural safeguards may be less robust than in the federal system, and where historical precedents exist for swift execution of judgments.

Compounding these judicial issues is the scourge of extrajudicial execution. While the state may hesitate to carry out formal judicial hangings, security forces have been implicated in hundreds of extrajudicial killings, particularly in the context of counter-terrorism and anti-crime operations. Reports by organizations such as Global Rights indicate that between 2020 and 2023, hundreds of Nigerians were victims of extrajudicial execution, blurring the lines between state-sanctioned punishment and lawless violence. This reality undermines the moral authority of the state's retentionist stance, suggesting that the rule of law regarding capital punishment is often bypassed entirely.

Advocacy, Reform, and the Future of the Death Penalty

The trajectory of capital punishment in Nigeria is increasingly influenced by a robust abolitionist movement. Civil society organizations, including the Legal Defence and Assistance Project (LEDAP) and Amnesty International, have intensified their calls for a total

¹⁸⁰ <https://www.ahrlj.up.ac.za/badejogbin-o> <accessed 23rd of November 2025>

moratorium and eventual abolition. These groups argue that the death penalty in Nigeria is discriminatory, prone to error, and fails to deter crime. Their advocacy achieved a significant victory in 2024–2025 when legislative proposals to expand the death penalty to include drug trafficking were defeated. This legislative pushback suggests that while the death penalty remains on the books, there is little political appetite to expand its scope.¹⁸¹

Ultimately, Nigeria occupies a complex middle ground. It is neither fully retentionist in practice nor abolitionist in law. The courts continue to sentence, the prisons continue to fill, but the hangman remains idle. This "de facto moratorium" is fragile, dependent on the political will of current leaders rather than binding legal reform. Without a constitutional amendment or a legislative repeal of mandatory death penalty statutes, the risk of a resumption of executions remains a looming possibility, threatening to turn the current pause into a bloody reality.¹⁸²

4.3.4 Comparing the Nigerian Current State of Capital Punishment with International Jurisdictions

The global landscape of capital punishment in the twenty-first century is defined by a profound fracture between nations that have abandoned the practice as a relic of a less civilized past and those that retain it as a necessary instrument of justice, a divergence vividly illustrated by the contrasting legal trajectories of the United States, the United Kingdom, and Nigeria.¹⁸³ In the United States, the death penalty remains a deeply entrenched yet geographically polarizing institution that has weathered significant constitutional challenges, most notably the Supreme Court's 1972 decision in *Furman v. Georgia*, which temporarily halted executions due to their arbitrary application, and the subsequent 1976 *Gregg v. Georgia* ruling that reinstated the

¹⁸¹ <https://punchng.com/advocacy-groups-want-death-penalty-abolished/> <accessed 23rd of November 2025>

¹⁸² <https://nigerianobservernews.com/2025/08/death-penalty-unjust-ineffective-in-nigeria-ngo/> <accessed 23rd of November 2025>

¹⁸³ World Population Review. Countries with Death Penalty. <https://worldpopulationreview.com/country-rankings/countries-with-death-penalty> <accessed 23rd of November 2025>

penalty under stricter procedural safeguards. As of 2025, the American system is characterized by a sharp regional divide where approximately 24 to 27 states retain capital punishment on their statute books, yet the actual machinery of death is aggressively active only in a specific "death belt" of Southern states including Texas, Florida, Alabama, and South Carolina, which collectively drove a surge to around 44 executions in 2025 alone.¹⁸⁴ This active retention is currently complicated by a logistical crisis involving lethal injection drugs, compelling states to adopt controversial alternative methods such as nitrogen hypoxia (first used in Alabama) and a revival of the firing squad, sparking intense legal debates over the constitutional prohibition against cruel and unusual punishment.¹⁸⁵ Conversely, the United Kingdom offers a definitive model of total abolition, having transitioned from the infamous "Bloody Code" of the 18th century to a modern legal framework where the state possesses absolutely no authority to take a human life. This shift began in earnest with the Murder (Abolition of Death Penalty) Act 1965, which suspended capital punishment for murder, and was finalized in 1998 when the death penalty was abolished for the remaining theoretical offenses of treason and piracy, a stance further cemented by the UK's ratification of Protocol 13 of the European Convention on Human Rights.¹⁸⁶ Consequently, there are no capital offenses in British law today, and the nation aggressively champions abolition on the international stage, viewing the death penalty as a fundamental violation of human rights.¹⁸⁷ Meanwhile, Nigeria presents a complex paradox that sits between these two extremes, operating as a retentionist state in law but an abolitionist one in practice through a "de facto moratorium." Nigerian statutes, including the Criminal Code and the Robbery and Firearms (Special Provisions) Act, mandate the death penalty for crimes

¹⁸⁴ Death Penalty Information Center. History of the Death Penalty Timeline. <https://deathpenaltyinfo.org/stories/history-of-the-death-penalty-timeline> <accessed 23rd November 2025>

¹⁸⁵ USA Today. (2025). Execution methods choices: firing squad, gas, electric chair. <https://www.usatoday.com/story/news/nation/2025/06/05/execution-methods-choices-firing-squad-gas-electric-chair/83801621007/> <accessed 23rd November 2025>

¹⁸⁶ British Institute of Human Rights. The Abolition of the Death Penalty. <https://www.bihhr.org.uk/get-informed/what-rights-do-i-have/abolition-of-the-death-penalty> <accessed 23rd November 2025>

¹⁸⁷ <https://www.pgaction.org/ilhr/adp/gbr.html> <accessed 23rd November 2025>

such as murder, armed robbery, and treason, a list expanded in northern states by Sharia law to include offenses like adultery and blasphemy.¹⁸⁸ However, despite boasting one of the largest death row populations in Africa with over 3,500 inmates living in the agonizing limbo known as the "death row phenomenon," there have been no officially sanctioned judicial executions since 2016, creating a disconnect where courts continue to hand down mandatory death sentences such as in the controversial prosecution of IPOB leader Nnamdi Kanu, where the judge notably opted for life imprisonment over the prosecution's demand for death—while the executive branch refuses to sign the final warrants.¹⁸⁹ This tripartite comparison underscores that while the UK has closed the door on state-sponsored killing and the US struggles to keep it ajar amidst logistical and ethical crises, Nigeria remains trapped in the doorway, burdened by colonial-era laws that mandate a punishment the state is increasingly hesitant to enforce.¹⁹⁰

4.4 Conclusion

The examination of the death penalty in Nigeria reveals a system where the ultimate punishment operates less as a final act of justice and more as an instrument of prolonged psychological torment. The disconnect between the aggressive imposition of mandatory death sentences and the state's persistent refusal to execute has created a harrowing "death row phenomenon," where thousands languish in squalid conditions, stripped of dignity and trapped in a state of terror. This paralysis exposes the deep structural flaws of a judicial framework that relies on rigid statutes and often tainted evidence, resulting in a cycle of trauma for inmates and their families (secondary victims) without delivering the promised deterrence or safety to

¹⁸⁸ Journal of Transnational Law & Policy. Capital Punishment in Nigeria. <https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1078&context=jtlp> <accessed 23rd November 2025>
<https://www.premiumtimesng.com/news/headlines/837002-updated-court-sentences-nnamdi-kanu-to-life-imprisonment-for-terrorism.html> <accessed 23rd November 2025>

¹⁹⁰ Amnesty International. (2024). Global Report: Death Sentences and Executions 2023. <https://www.amnestyusa.org/wp-content/uploads/2024/05/Amnesty-International-Global-Report-Death-Sentences-and-Executions-2023.pdf> <accessed 23rd November 2025>

the broader society. The Nigerian experience serves as a stark reminder that a penal system defined by uncertainty inflicts a specific cruelty that arguably exceeds the severity of the execution itself.

When viewed through a comparative lens alongside the United Kingdom and the United States, Nigeria's predicament highlights the divergent trajectories of modern criminal justice. The United Kingdom stands as a model of total abolition, having rejected state-sponsored killing in favor of a human rights-based approach, while the United States represents a fractured retentionist model, where the practice is active but increasingly isolated, methodologically troubled, and legally contested. Nigeria occupies a volatile middle ground between these two extremes burdened by colonial retentionist laws that mirror early American rigor, yet paralyzed by a political hesitation that creates a de facto moratorium. This comparison underscores that while the UK has evolved past the gallows and the US actively debates their utility, Nigeria remains trapped in a legislative stalemate that perpetuates human suffering without achieving penal efficacy.

Ultimately, the persistence of capital punishment in Nigeria, despite its practical suspension, suggests that the nation stands at a critical ethical and legal crossroads. The current status quo (where the state retains the power to kill but lacks the political will to exercise it) is unsustainable, fostering a culture of systemic abuse that undermines the rule of law. Moving forward, the evidence suggests that Nigeria must look beyond the retributive models of the past and align its statutes with evolving global standards of human dignity. True justice requires a system that does not rely on a punishment it is too hesitant to administer and too flawed to trust, pointing toward the necessity of following the abolitionist path to ensure a more humane and effective legal future.¹⁹¹

¹⁹¹ Nigerian Law Guru. The Quality of Justice is Strained: A Critical Analysis of Death Penalty in Nigeria. <https://nigerianlawguru.com/wp-content/uploads/2024/11/THE-QUALITY-OF-JUSTICE-IS-STRAINED.pdf> <accessed 23rd November 2025>

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

The administration of capital punishment in Nigeria constitutes a profound human rights crisis, characterized by a harrowing dissonance between the statutory retention of the death penalty and its practical enforcement. While the Nigerian criminal code prescribes death for offenses ranging from murder and armed robbery to terrorism, the nation effectively operates under a *de facto* moratorium, resulting in a swollen death row population exceeding 3,700 individuals. These inmates often languish for decades in squalid, overcrowded facilities, enduring a psychological torture known as the "death row phenomenon," where the agonizing uncertainty of their fate precipitates severe cognitive decline and mental anguish. This prolonged incarceration, arguably a violation of the constitutional protection against torture, is compounded by systemic procedural injustices documented by organizations such as Amnesty International and media outlets like HumAngle. Investigations reveal that convictions are frequently secured through forced confessions extracted via torture, with defendants lacking adequate legal representation or the financial means to mount a robust defense. Furthermore, the application of capital punishment reveals deep gendered and socio-economic disparities; studies indicate that a significant majority of women on death row are mothers, suggesting that the penalty often punishes families and vulnerable populations rather than serving as a precise instrument of justice.

The constitutional validity of Nigeria's capital punishment regime is increasingly challenged by the rigidity of its sentencing laws, which create a friction between statutory mandates and fundamental human rights. A central point of contention is the prevalence of mandatory death sentences for crimes such as armed robbery, which strip judges of the discretion to consider mitigating circumstances or the individual nuances of a case.

This judicial straitjacket was starkly highlighted in the landmark Supreme Court case of *Onuoha Kalu v. The State*, which affirmed the constitutionality of the death penalty but simultaneously exposed how statutes like the Robbery and Firearms Act undermine the right to a fair hearing and the principle of proportionality. This legal complexity is further stratified by the operation of Sharia law in northern states, where the list of capital offenses expands to include moral crimes such as adultery and blasphemy, raising serious constitutional questions regarding equality before the law and non-discrimination. Scholarly works, such as Karimunda's *The Death Penalty in Africa*, argue that these judicial rigidities, combined with the reluctance of state governors to sign execution warrants due to political and humanitarian pressures, have trapped the justice system in a state of paralysis that undermines the rule of law while failing to offer any proven deterrent effect on violent crime.

Placing Nigeria within the broader international context reveals its growing isolation as a retentionist state in a world (and a continent) increasingly moving toward abolition. While fellow African nations like Rwanda and South Africa have dismantled their capital punishment apparatuses, and even retentionist counterparts like the United States face intensifying scrutiny and restriction, Nigeria remains an outlier. The United Kingdom, whose colonial laws originally established much of Nigeria's penal code, has long since abolished the practice, a divergence that highlights the need for post-colonial legal reform. Domestic and international human rights advocates argue that the Nigerian system is too flawed, corrupt, and economically biased to administer the ultimate punishment fairly. Consequently, there is a mounting consensus among reformers that the only viable path forward is to formalize the current moratorium into law, commute existing death sentences to life imprisonment, and dismantle the machinery of execution. This shift is viewed not merely as a concession to international standards, but as a necessary step to restore the dignity of the Nigerian judicial system and end

the cycle of trauma that capital punishment inflicts on inmates, their families, and society at large.

5.2 Recommendations

These are some comprehensive recommendations to advance the study and reform of capital punishment in Nigeria:

Formalize the Moratorium on Executions: The Nigerian government should transition from its current "de facto" pause on executions to a formal, legally binding national moratorium. This official suspension would prevent the sudden resumption of state killings and provide a critical window for a comprehensive judicial review of all pending death row cases to identify potential miscarriages of justice.

Abolish Mandatory Death Sentencing: Legislative bodies must urgently repeal laws that impose mandatory death sentences for crimes such as armed robbery and murder. Restoring judicial discretion is essential to ensure that courts can evaluate the specific circumstances of each case, including the defendant's background and culpability, rather than being forced to apply a rigid, one-size-fits-all punishment.

Enhance Legal Aid for the Indigent: The state must significantly increase funding and resources for the Legal Aid Council to provide competent, high-quality defense counsel for indigent defendants facing capital charges. Ensuring that the poor have access to experienced lawyers is the only way to prevent wrongful convictions resulting from inadequate representation and to uphold the constitutional right to a fair trial.

Restructure Appeals and Depoliticize Clemency: The judicial system requires a restructuring of the appellate process to strictly guarantee that no execution can be carried out while an appeal is pending. Furthermore, the Prerogative of Mercy should be depoliticized by establishing independent clemency boards mandated to review all death row files for evidence of wrongful conviction, disproportionate sentencing, or humanitarian grounds for commutation.

Establish a Transparent National Registry: The government should establish a centralized, publicly accessible database that tracks all death sentences, executions, and commutations with granular detail. Collecting disaggregated data on factors such as gender, age, socioeconomic status, and offense type is crucial for identifying systemic biases and fostering an evidence-based approach to criminal justice reform.

Humanize Prison Conditions on Death Row: Immediate action is required to ameliorate the inhumane conditions within correctional centers, specifically addressing the severe overcrowding and lack of sanitation that plague death row sections. Providing adequate healthcare, nutrition, and psychological support is necessary to end the "death row phenomenon" and ensure that incarceration does not amount to torture or cruel and degrading treatment.

Commission Independent Empirical Research: Policymakers should fund and support independent, multi-disciplinary research to empirically evaluate the efficacy of the death penalty as a deterrent to crime in Nigeria. Academic inquiry into the prevalence of wrongful convictions and the sociological impact of capital punishment is vital for moving the national debate beyond emotion and towards fact-based policy decisions.

Launch Public Education Campaigns: Civil society and government agencies should collaborate on widespread public education campaigns to challenge popular misconceptions about the death penalty's ability to curb crime. Fostering a nuanced national dialogue that informs citizens about the risks of irreversible error and the human rights costs of capital punishment can help shift public sentiment toward alternative justice models.

Harmonize Federal and Regional Statutes: A comprehensive legislative review is needed to harmonize the disparities between federal statutes and regional Sharia penal codes regarding capital offenses. Ensuring that a crime punishable by death in one state is not treated differently in another is fundamental to guaranteeing equal protection under the law and non-discrimination for all Nigerian citizens.

Deepen International Human Rights Engagement: Nigeria should deepen its engagement with international bodies such as the African Union and the United Nations to align its domestic practices with global human rights treaties. Leveraging technical support and adopting best practices from abolitionist nations will assist Nigeria in navigating the legal and political complexities of moving toward the eventual abolition of the death penalty.

5.3 Conclusion

The comprehensive study of capital punishment in Nigeria reveals a judicial system deeply divided between its colonial legal legacy and evolving humanitarian principles. While Nigerian statutes continue to strictly mandate the death penalty for a wide array of offenses ranging from armed robbery to religious crimes, the actual practice is increasingly viewed as constitutionally flawed and ineffective. The nation remains trapped in a legal paradox where retentionist laws are kept on the books, yet the state is hesitant to enforce them, acknowledging implicitly that

the ultimate punishment has failed to serve as a deterrent to violent crime or a valid instrument of justice.

The human cost of this systemic contradiction is borne most heavily by the thousands of inmates languishing on death row, who are subjected to the psychological torture known as the "death row phenomenon." These individuals endure squalid, overcrowded prison conditions and the agonizing mental trauma of indeterminate sentences, a reality that violates Nigeria's constitutional guarantees of dignity and its commitments under international human rights treaties. This suffering is exacerbated by the rigid application of mandatory death sentencing, which strips judges of the discretion to consider mitigating circumstances, disproportionately punishing the poor and increasing the risks of irreversible wrongful convictions.

Ultimately, the evidence suggests that Nigeria must move beyond its current impasse and align its legal and institutional frameworks with global best practices. As demonstrated by nations like the United Kingdom and Sierra Leone, abolishing the death penalty does not compromise public safety but rather fosters a more humane and effective justice system. By formalizing the current moratorium, harmonizing federal and regional laws, and transitioning toward rehabilitative justice, Nigeria can resolve its constitutional crisis and build a legal framework that truly respects the sanctity of life and the rule of law.

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