

## **ABOLITION OF DEATH PENALTY IN NIGERIA: JURISTIC ISSUES AND SOLUTIONS**

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**ABSTRACT:** *Death penalty or capital punishment which simply means the imposition and execution of death sentence on a convicted person under prescribed State Law is no doubt a controversial subject matter. This controversy has led to the emergence of those who support its retention in the country's statute books and those who want it abolished. The two groups have their compelling reasons. We looked at the laws both statutory and case as well as opinion of text writers and came to the conclusion that there are more reasons for its continuous existence. We however proposed some recommendations aimed at reducing cases where capital punishment must give way to life imprisonment even under the existing legislations in Nigeria.*

**KEYWORDS:** death penalty, capital punishment, abolitionists, retentionists, solutions.

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### **INTRODUCTION**

Death penalty or capital punishment which is a sentence of death passed on a felon who has been tried and convicted of an infraction of prescribed law of state authority has been a subject of intense debate by those who are in support of its abolition and those against. Those against its retention contend that it is inhuman and its deterrent effect not serving any useful purpose in a world moving towards restorative and rehabilitation justice. On the other hand, those in favour of its continued retention argue that it has scriptural and constitutional approval as it is the primary duty of the state to ensure the safety of citizens and their property which cannot be achieved by allowing felons to receive life imprisonment or term of years as the case may be.

In order to have a balanced view of the issues and possible solutions, we intend to look at the legal meaning of the concept. We shall then go on to look at it from historical perspective, the laws in Nigeria prescribing it, some decided cases and the arguments in favour its abolition and of course in favour of its retention. We shall try to look at issue of exemptions which is often the kernel of the law. At the end, we shall take position, give our reasons and make recommendations for possible solution to the problem of death penalty in Africa's largest democracy.

### Death Penalty and Its History.

Death Penalty or capital punishment denotes a sentence to death by a court of law which it arrives at after trial for an alleged criminal act. Its result is that the convicted person will be killed in the form and manner prescribed in the relevant law. This is death sentence which the authors of *Black's Law Dictionary*<sup>1</sup> describe as “judgment of blood”. It sees death penalty as being same as capital punishment which it defines as: “the sentence of death for a serious crime”<sup>2</sup>

Death penalty is also defined as: “punishment by execution”<sup>3</sup>. The same text gives a more assertive definition of capital punishment as “the legally authorized killing of someone as punishment for a crime”<sup>4</sup>. Hence, death penalty or capital punishment is that type of punishment for crime that ends in the untimely termination of the person’s life after conviction. The termination may take any form such as by hanging, execution by firing squad, crucifixion, stoning, lethal injection and etc as may be prescribed in the enabling statute<sup>5</sup>. Death penalty has also been defined as the most extreme form of punishment on a person who has been convicted of the relevant offence<sup>6</sup>. It is the legal infliction of the greatest punishment to a human which culminates in his untimely death for going against the relevant laws of the land. It is legal because the law authorizes its application on the citizen who has put up himself for it. Death penalty being a crime is as old as the human society. It is established legal fact that all societies irrespective of level of development must have a set of rules and regulations that guide the conduct of the members. Thus the provision for the crime of capital offence (s) had moved with man even at the earliest time of the Bible<sup>7</sup>. Before the emergence of modern times and at different stages of civilization, it formed parts of the criminal statutes<sup>8</sup>.

In Nigeria before the coming of Europeans, the various tribes and language groups had customary criminal laws which prescribed capital punishment for several offences such as

<sup>1</sup> B.A Garner, *Black's Law Dictionary*, 9<sup>th</sup> ed. (Dallas Texas: West Publishing Co, 2009) P.1485

<sup>2</sup> *Ibid* p. 238

<sup>3</sup> C. Soanes and A. Stevenson, *Concise Oxford English Dictionary*, 11<sup>th</sup> ed. (New York: Oxford University Press, 2004) P.369

<sup>4</sup> *Ibid* p.208

<sup>5</sup> Section 402 of the *Administration of Criminal Justice Act, 2015*, provides that it shall be “by the neck till he is dead or by lethal injection”. *The Criminal Code Act, Laws of the Federation of Nigeria* Cap C.38, 2010; *Criminal Code Laws of the Southern States* as well as the *Penal Code Laws of the Northern States* also provide for death by hanging. See generally: <https://www.deathpenaltyworldwide.org/country-search-post.cfm?Country=Nigeria>. for full database on the existing criminal laws in Nigeria as at June 19, 2014 touching on death sentence and mode of killing on conviction accessed on April 27, 2019 by 3 pm.

<sup>6</sup> C.W.O Duru, “The Constitutionality of Death Penalty Under Nigerian Law” <http://ssrn.com/abstract=2142981> accessed on 27/04/2019 by 12 noon.

<sup>7</sup> Genesis 9:6, Exodus 21:12-17, Deuteronomy 19:11-12. The same is provided in the *Holy Koran*: Chapter 5:36

<sup>8</sup> Thus even in the times of Babylonian, Assyrian, Greek and Roman civilizations death penalty was applied for designated crimes such as murder, heresy, sexual pervasions, treason etc. Our Lord Jesus Christ was crucified by Roman authorities for heresy that he claimed to be son of God. Mathew 26:63-65.

murder, grave sexual misconducts, stealing with violence, disrespecting the gods and etc. In the Moslem North, Islamic customary law was applied to Muslims while the traditional worshippers applied their customary laws to punish citizens who brought condemnation to the land with their bad conducts.

In the Igbo heartland, we read in *Things Fall Apart* the shocking stories of murder and punishments meted out to those who committed capital offences<sup>9</sup>. In my own clan of Okposi in the Ohaozara Local Government of Ebonyi State of Nigeria, there were offences that attracted death sentence such as murder, adultery between married man and woman of the same village, habitual stealing, profaning the shrines and or gods and other forms of unexpected criminality such as a man impregnating the daughter or harvesting crops without the requisite sacrifices, witchcraft and etc.

The arrival of Europeans into Nigeria in the 19<sup>th</sup> century led to the abolition of many Customary and Islamic laws which provided for death sentence<sup>10</sup>. The result is that all Customary and Islamic laws that prescribe death penalty no longer apply in Nigeria save those duly enacted<sup>11</sup>. The laws currently providing for death penalty will be the next issue in this paper.

### **Current Laws In Nigeria On Death Penalty**

There are many legislations in Nigeria today touching on capital punishment, some of which are even older than the country and some just few months old<sup>12</sup>. We shall not spend time discussing the laws in question as our focus is not on whether they exist but on the desirability of their existence. However, a brief mention of some of them is necessary for this exercise.

The first law providing for death penalty is the *Criminal Code*.<sup>13</sup> Here death penalty is provided for offences of murder, treason, treasonable felonies and instigating the invasion of the country amongst others.

The next federal law which provides for capital punishment is the *Armed Forces Act*<sup>14</sup>. Another law at the national level providing for death sentence is the *Robbery and Fire Arms (Special*

<sup>9</sup> C. Achebe, *Things Fall Apart* (London: Pearson Education Ltd, 2008) pp.22-28, 99-100. Here, Ikemefuna and another young lady were used as ransom by their clan to avoid war for the murder of a native of Umuofia. Okonkwo had to go on exile for 7 years for the unintentional killing of a lad through accidental discharge of his den gun at a burial. This was because it was “a female ochu” – not intentional

<sup>10</sup> The use of the Repugnancy Tests and the provisions of the *Independence Constitution 1960, Republican Constitution 1963: The 1979 Constitution and s. 36 (12) 1999 Constitution as amended* which forbade any form of Criminal law that is not written.

<sup>11</sup> Such as the *Criminal Code Act Cap .C 38, LFN 2010, Criminal Code Laws of the Southern States, Penal Code Laws of the Northern States as well as Sharia Laws in States applying Sharia, the Nigerian Armed Forces Act, 1993 and etc.*

<sup>12</sup> The early ones being the *Criminal Code Act (1916) L.F.N Cap. C 38, 2010* and new ones being state laws against kidnapping and Sharia Laws in some Northern States of Nigeria.

<sup>13</sup> *Cap. C 38, L.F.N, 2010. Its section 319 (1) for murder; section 37 for treason and treasonable felony, section 38 for instigating invasion of Nigeria and all stipulate death penalty.*

<sup>14</sup> *Section 114 (3) (a) Armed Forces Act Cap A20 L.F.N 2010* whereof punishment is death sentence for treason and kindred offences.

*Provisions*) Act<sup>15</sup>. This law was made by the military government after the civil war in 1970 and provided for death penalty for participating in armed robbery in any part of Nigeria. Where a person is convicted and sentenced to death in Nigeria under any of the federal laws, he shall die by hanging or through lethal injection<sup>16</sup>.

At the State level, all the Southern States have their *Criminal Code Laws* which provide for death penalty for murder, armed robbery, treason and treasonable felonies<sup>17</sup>. In the same vein, all the Northern States operate the *Penal Code*<sup>18</sup>. In the years between 2000 and 2013, about twelve (12) Northern States introduced Sharia Laws which provided capital punishment for certain offences such as adultery, apostasy and speaking against Prophet Mohammed etc<sup>19</sup>. As if in competition with their Northern counterparts, some states in the South introduced death penalty for the offence of kidnapping<sup>20</sup>. The summary is that offences which attract capital punishment in Nigeria are too numerous for comfort and calls for urgent action on the part of all well meaning citizens and governments at every level.

Before concluding on the applicable laws in Nigeria, it is important to note that certain categories of offenders are exempted from imposition of capital punishment. These are pregnant women, underaged offenders, mentally sick persons and nursing mothers<sup>21</sup>.

Where a woman found guilty of a capital offence is pregnant, the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned<sup>22</sup>. By the provisions of this Act which repealed three other federal legislations<sup>23</sup> the position now is that a pregnant woman convicted of capital offence will not be subjected to the punishment until after delivery and weaning of the baby. This is in accord with *African Convention on Human and Peoples' Right Protocol on the Rights of Women in Africa* which Nigeria is a

<sup>15</sup> *Cap R11, L.F.N 2010 section 1 (2)*, The Civil War which ended in 1970 brought with it lots of violent crimes particularly armed robbery on the high ways and homes of citizens, hence the need for provision for grave punishment.

<sup>16</sup> Section 402 of *Administration of Criminal Justice Act, 2015* which applies in all Federal Courts in Nigeria and Federal Capital Territory, Abuja. It does not apply to a Court Martial-S 2 (2).

<sup>17</sup> See for example *section 319(1) of the Criminal Code Law of Ebonyi State 2009* which like *Criminal Codes* of other Southern States has the same numbering of sections as the Federal Act, as the said section 319 provides for punishment for murder which is death sentence. Thus sections 37 and 38 provide respectively for offences of treason and instigating invasion of the country with death penalty.

<sup>18</sup> Which in section 221 provides death sentence for culpable homicide and section 411 for treason punishable with death amongst other offences of similar punishment.

<sup>19</sup> See *Death Penalty Worldwide. Supra* note 5.

<sup>20</sup> Such states include Imo, Abia, Akwa Ibom and Ebonyi State and many more states are warming up to join. Imo and Ebonyi States enacted theirs in 2009.

<sup>21</sup> See full discussion of this in Nzeribe, Ejimnkonye *etal* "Death Penalty In Nigeria: To Be or Not To Be: The Controversy Continues" [http://www.arabianjbm.com/pdfs/Om-vol-3-\(3\)/3.pdf](http://www.arabianjbm.com/pdfs/Om-vol-3-(3)/3.pdf). accessed on 7<sup>th</sup> May, 2019 at 2 pm.

<sup>22</sup> See *section 404 of the Administration of Criminal Justice Act, 2015*

<sup>23</sup> Namely the *Criminal Procedure Act, Cap. C 41, L.F.N.2010, Criminal Procedure (Northern States) Act, Cap C 42, L.F.N 2010* and the *Administration of Justice Commission Act, Cap A3 L.F.N 2010*.

signatory. This protocol prohibits the execution of nursing mothers by countries that are treaty parties<sup>24</sup>. The *Criminal Procedure Act and Criminal Procedure (Northern States) Act* provided that life imprisonment be the option where a pregnant woman is convicted but that is no longer the law in the light of the 2015 Act.

Child offenders below the age of eighteen years cannot be sentenced to death but in lieu of it, the court shall sentence the child to life imprisonment or to such other term as the court may deem appropriate in consideration of the objectives of the *Administration of Criminal Justice Act*<sup>25</sup>. This position of the law has been in the past, save that under the repealed *Criminal Procedure Act*, the age of seventeen years was the bar. Thus in *Modupe v. State*<sup>26</sup>, the apex court in Nigeria stated

If at the time the offence was committed, an accused charged with capital offence has not attained the age of 17 years, it will be wrong for any court not only to sentence him to death but to even pronounce or record such sentence

Thus the eighteen years age limit now in the 2015 Act agrees with the *Child Rights Act, 2013* and constitutional provision<sup>27</sup> on presumed age of adulthood in the country for purposes of assessing responsibility and maturity. Section 28 of the *Criminal Code* exempts a mad person from criminal responsibility if he can prove all ingredients of insanity enshrined therein. Where an accused lunatic has been certified to be insane, sentence of death cannot be passed or carried out but be detained at the pleasure of the Governor or President as the case may be.

A text writer<sup>28</sup> has suggested that persons of extreme old age, say from seventy (70) years should be exempted from capital punishment because of their susceptibility to old age sicknesses which prevent them from being logical in their thinking and actions. This suggestion cannot be faulted as old age often brings a person to infantile status which makes him reason like infants. If a child cannot be killed for capital punishment, the same benefit should be extended to persons of extreme old age. It is additionally suggested that medical examination be carried out in each case to make sure that old age illness played role in the conduct of a felon.

Finally from the existing laws in Nigeria and outside, the following methods of killing a condemned felon have been identified and they include: by hanging, shooting or firing squad, stoning, lethal injection, beheading and electrocution. Each of these methods have their

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<sup>24</sup> In similar vein, the provisions of the repealed Acts mentioned in note 23 can no longer be invoked in federal courts but it is doubtful what the state courts will be doing as they have their laws of Criminal Procedure. Perhaps, the doctrine of covering the field will apply to allow use of 2015 Act by the States as state laws on the subject matter conflict with the new law at the national level.

<sup>25</sup> See section 405.

<sup>26</sup> (1988) 4 NWLR (Pt 87) 9 S.C. I

<sup>27</sup> Section 77 (2) 1999 Constitution (as emended)

<sup>28</sup> See E.O Akingbehin "Exemptions of the Vulnerable from Capital Punishment in Nigeria: Expanding the Frontiers" <http://www.bjournal.co.uk/BJASS as PX.P.55> accessed on 27-4-2019.

dehumanizing and excruciating effects on the convict, his family and all who value life<sup>29</sup>. We shall devote more time and space to this when we look at the arguments of those against death penalty and those in favour.

### **The Abolitionists**

Those who are against death penalty which we shall treat as a school of thought have very cogent reasons for its abolition, particularly in Nigeria. We shall take their views in the following order. First is their contention that it is inhuman and degrading punishment and as a result unconstitutional by virtue of *section 34(1) (a)* of the *1999 Constitution of Nigeria (as amended)*. *Section 34 (1) (a) of the Constitution* provides as follows:

Every individual is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment. It is argued in favour of a condemned prisoner that the words “every individual” and “no person” show that the felon is not exempted from the protective provisions of the said section 34 (1)(a) against inhuman and degrading treatment<sup>30</sup>. In the views of N. Ofo, the section which provides for death sentence may be constitutional but the mode of punishing a condemned prisoner is not and cannot be justified under the constitution. We are however hesitant in sharing this view because *section 33 (1) of the Constitution* which provides for right to life is unambiguous and states clearly that a person’s life can only be taken from him in execution of court sentence after trial for an offence which that person has committed. It is trite law that every provision of the constitution is independent and standing on its own and cannot be amended by another section<sup>31</sup>. Until sections *33 (1) and 34 (1) (a)* are amended by parliament, death penalty cannot be said to be unconstitutional and illegal in Nigeria. Second, that it is cruel and barbaric to kill a person because he committed offence prescribing death sentence. Commenting on this, a text writer posited interalia:

Those condemned to death often suffer acute anguish both physical and mental before execution. This is so whether the prisoner is told before hand of the date of execution or not. When the date is known, at least the fear of waking to face death without warning is removed. Even so, the stress which the condemned prisoner suffers can be great enough to cause psychosis.

The methods by which executions are carried out can involve physical torture. Hanging, electrocution, the gas chamber and firing squad may not kill instantaneously..... Whatever method of execution adopted each defies the concept of humanity. It is immaterial whether the state has constitutional right to impose death penalty for any offence<sup>32</sup>. All through the condemnations of death penalty in both Nigeria and outside, cruelty and man’s inhumanity to man are always projected as the reason why it should be abolished. But what these proponents have not tried to imagine is the fate of the dead person in the case of outright murder or in the

<sup>29</sup> See N. Ofo “Constitutionality or Otherwise of Death Penalty Enforcement In Nigeria,” *Ebonyi State University Law Journal* vol.3 No. 1 2009,pp71-74

<sup>30</sup> *Ibid* p.75 and 76

<sup>31</sup> See *Musa & Ors v. INEC & Ors* (2003) 3 N.W.L.R (Part 806) 725

<sup>32</sup> B. Uweru, “The Efficacy of Death Penalty: An Analysis of a Survey of Women Hard Drug Traffickers in Benin and Warri, Nigeria” in B. Ajibola *etal* (eds). *Narcotics: Law and Policy in Nigeria Vol.8* (Lagos: Federal Ministry of Justice, Law Review Series, 1990)p.366 at 372

case of kidnap victim who is allowed to die slowly in captivity due to hunger or where a bread winner of a family is dispatched to early grave in an armed robbery operation and young family members are left in the cold of life. The protagonists of the cruelty of death penalty even say that the families, friends and administrators of death sentence are usually psychologically and mentally affected by the sight or knowledge that their loved one is about to be killed or had been killed by the authority concerned<sup>33</sup>.

We are however surprised that no mention is made of the fate of relatives of the man who is now many feet inside the ground and whose body may have been mutilated or burned by the condemned felon in the course of his criminal act which led to the conviction. Three, that the processes of investigation, trial and conviction are often faulty and may lead or have led to execution of innocent persons<sup>34</sup>. To them, death penalty violates the accused's right to fair trial as our system of justice administration has its flaws which may badly affect the case of a prisoner. The case of *Nafiu Bello v. Attorney General of Oyo State*<sup>35</sup>, where accused appellant was executed while his appeal was pending is referred to as pointer to their contention against death penalty. Four, it is contended herein that death penalty is bad and cannot be reversed once passed and carried out. That instead of rehabilitating and reabsorbing the felon into the society, he is sent to place of no return, thereby making the essence of punishment useless. This to them contradicts the notion of freedom and dignity<sup>36</sup>. Five that the concept of death penalty as means of dispensing retributive justice or as deterrence has failed to check the incidents of murder and other heinous crimes which bedevil the society. However, they fail to imagine what could have been the case if we have no these laws against capital offences. Six, death penalty has also been seen as unjust and vindictive and only a remnant of the old system of justice which was hinged on vengeance that he who has taken life should suffer the same fate<sup>37</sup>. This no doubt is a statement which rather justifies the use of death penalty as an old system of justice which prescribes equal punishment for every type of crime.

Finally, the protagonists of abolition of death penalty contend that Nigeria is swimming against the tide in International Law and Practice as over two third (2/3) of the 192 countries of the world have abolished the concept<sup>38</sup>. It is contended that by her foreign policy objectives<sup>39</sup>, Nigeria has undertaken to respect international law and treaty obligations amongst others and that by retaining death penalty in our laws; she is in breach of that clause.<sup>40</sup> They point out the fact that the *Universal Declaration of Human Rights* (U.D.H.R) recognizes the right to life in unqualified terms by stating that: "everybody has right to life, liberty and security of the person"<sup>41</sup>. In similar vein, the *International Covenant on Civil and Political Rights*<sup>42</sup>, allows

<sup>33</sup> N. Ofo *op.cit* pp 77-78

<sup>34</sup> Nzeribe, Ejimkeonye *et al, op.cit*

<sup>35</sup> (1986) 5 N.W.L.R (Pt. 45)p.828

<sup>36</sup> Nzeribe, Ejimkeonye *et al, op.cit*

<sup>37</sup> O.O Uche and B.O.S Udezo "Implications of Capital Punishment in Nigeria Society"; *African Research Reviews*, Vol.5 (4) serial No. 21, July 2011, pp 423-438

<sup>38</sup> See generally N. Ofo, *op.cit*. see also C.W.O Duru, *op.cit*

<sup>39</sup> *Section 19 (d) 1999 Constitution of Nigeria*, as amended.

<sup>40</sup> This clause is however under chapter 2 which is not justiceable and therefore cannot be seriously canvassed.

<sup>41</sup> See *Article 3, U.D.H.R 1948*

<sup>42</sup> See *Article 6 (2) ibid*

death penalty in those countries that have not abolished it but prohibits death punishment on juveniles and pregnant women. Article 6 (6) of the Covenant urges state parties to abolish the practice. The *European Convention on Human Rights* (E.C.H.R) has abolished death penalty by its 6<sup>th</sup> *Protocol to the Convention*. The *American Convention on Human Rights*, (A.M.C.H.R) has also in its newest Protocol abolished death penalty just as the *United Nations Second Optional Protocol of I.C.C.P.R* has now abolished death penalty<sup>43</sup>.

With these developments at the international arena, this School of Thought, sees Nigeria as going against international law by not abolishing capital punishment.

### The Retentionists

The proponents of continued retention of death penalty in Nigeria's legal system are no doubt as forceful as those in the abolition camp. We shall as we did in the other group, summarize their views with remarks and proceed to conclude this paper.

The first argument raised in their defence of capital punishment is that it is God ordained as the Holy Books of the most popular religions have this provision of "an eye for an eye"<sup>44</sup>. Thus in Genesis chapter 9 verse 6, God decreed: "whoever sheds the blood of man, by man shall his blood be shed; for God made man in his own image". This is no doubt an emphatic statement in the *Holy Bible*<sup>45</sup> that he who kills should be killed for the offence. The Holy Book does not allow for any argument save that he who commits murder must be killed. That person who is to kill the offender is provided by the society and that is where the State and its officials come in.

As if the above injunction is not clear enough, the *Holy Bible* in Exodus 21: verses 12 to 17 states: "Whoever strikes a man so that he dies shall be put to death... Whoever curses his father or his mother shall be put to death"<sup>46</sup>. Just as Leviticus 24:17 stipulate that he who kills a man shall be put to death". These are clear injunctions and punishment for murder or culpable homicide<sup>47</sup>. In the light of the fact that before the coming of Christianity and Islam to our shores that death penalty was already in place amongst our ancestors as a system of justice, is there still any further agitation on this issue of retention of capital punishment. We think that there is no need for such agitation than to find a way of improving our justice system so that those susceptible to this form of punishment may be reduced so that only those necessarily executable are killed. We say this because if we strongly oppose what the Holy Books stipulate as way of life, we may be seen as disobeying God with the attendant consequences<sup>48</sup>.

<sup>43</sup> Nigeria is not a signatory to this 2<sup>nd</sup> *Optional Protocol of I.C.C.P.R*

<sup>44</sup> See Nzeribe, Ejimkeonye *et al*, *op.cit*

<sup>45</sup> Taken from *The Bible: Revised Standard Version*. (GJIL Bible, 2002),p.7

<sup>46</sup> Here death sentence is prescribed for those who assault their parents, a sort of misdemeanor under our law. This tends to make way for all those small offences elevated to capital punishment under Sharia Laws in some Northern States of Nigeria.

<sup>47</sup> Quoran Chapter 5 Verse 36

<sup>48</sup> It is like the craze of gay marriage where some Europeans and Americans have made nonsense of real marriage because of the so called 'freedom of association' in their national statutes.

Second, the retentionists contend that the enforcement of death penalty in the society is aimed at the purification of the environment<sup>49</sup>. This they argue, has scriptural endorsement in Numbers 35: 16-34. Verses 33 and 34 are very instructive in this regard and they state thus: You shall not thus pollute the land in which you live; for blood pollutes the land, and no expiation can be made for the land, for the blood that is shed in it, except by the blood of him who shed it. You shall not defile the land in which you live, in the midst of which I dwell; for I the Lord dwell in the midst of the people of Israel

In the light of the above, proponents of death penalty are of the view that it has environmental relevance as it is meant to cleanse the land of the spilled blood by the felon. We agree with this view because even in the traditional society, our ancestors in addition to applying an eye for an eye always performed sacrifice to appease the gods of the land. It was believed that if this was not done it would bring calamity to the people<sup>50</sup>.

Three, the retentionists contend that death penalty is constitutional and legal in all respects in Nigeria. Their first point of anchor is section 33 (1) of the constitution which provides as follows:

Every person has a right to life and no one shall be deprived of his life, save in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. This provision, no doubt is clear and unambiguous. The right to life is declared in absolute terms except where the person has found himself on the wrong side of the law of the land. As a commentator observed, while the inalienability of the right to life is unambiguously emphasized by the constitution, a legitimate ground for derogation is provided for in the same constitution. Accordingly, when statutes prescribe the death penalty for certain classes of crimes and so long as such statutes derive their legitimacy from, and are not inconsistent with the constitution, they are legally valid and enforceable<sup>51</sup>.

This view by the learned author cannot be faulted as the constitution which is the greatest law in the land is clear on it. It is as simple as saying you have your right to life as long as you allow others to enjoy theirs. The courts in the land have followed suit to endorse this legal position. For example in the popular case of *Adeniji v. State*<sup>52</sup>, the court held that: “the death penalty as per sections 33 (1) and 33(2) of the constitution is expressly recognized by the said constitution.” In *Kalu v. State*<sup>53</sup> Igu J.S.C had held:

<sup>49</sup> See “Death Punishment: Three Reasons for Supporting the Death Penalty” available at <http://www.biblebelievers.com/imelton/punishment> .accessed on 14/5/2019

<sup>50</sup> See .C. Achebe, *Things Faull Apart op.cit.* The decision by the Elders of Umuofia for Okonkwo to proceed on exile for seven years for committing “female Ochu”-unintentional murder-was to cleanse the land of the blood of the lad who was inadvertently shot by Okonkwo during the burial of a member of the community.

<sup>51</sup> A. Iwilade, “Re: Illegality of Death Penalty” *the Punch Newspaper*, July 8, 2013.

<sup>52</sup> (2000) 645 N.W.L.R 356

<sup>53</sup> (1998) 13 N.W.L.R 537. This decision was based on the 1979 Constitution which bore the same wordings in section 30 (1) as the current 33 (1) of the *1999 Constitution (as amended)*. See also the recent case of *Obidike v. State* (2014) 10 N.W.L.R (pt. 1414) S.C 53 where the Supreme Court endorsed death sentence for murder. See also *Akinyemi v. State* (1999) 6. N.W.L.R 465 at 607 where Fabiyi J.C.A (as he then was)endorsed death penalty as appropriate under our laws.

In my view it is plain that the 1979 constitution can by no stretch of the imagination be said to have proscribed or outlawed the death penalty. On the contrary, section 30(1) of the Constitution permits it in the clearest possible terms so long as it is inflicted pursuant to the sentence of a court of law in Nigeria in criminal offence... The plain meaning of the section of the constitution cannot be derogated from in the absence of any ambiguity whatsoever. Without undue repetition, it is safe to canvass the view that death penalty under our laws cannot be said to be unlawful. The major quarrel is with the method of carrying out same which the abolitionists say is degrading and inhuman but does not take it away from our law as a country. We agree with the retentionists that death penalty under our laws is legal.

Four, it is contended that the death penalty clause in our laws is necessary to curtail the tendencies of those who have propensity to take the life of others. It is aimed at not only making them to pay for their action by way of retribution but to deter others from following the steps of such heinous actors. That is where retributive justice and deterrence are anchored. There are several judicial support for this argument. The most cited is the famous judgment of Fabiyi J.S. A in *Akinyemi v. State*<sup>54</sup> where the court held:

The sentence was well pronounced for the capital offence. It has the semblance of the Law of Moses: 'an eye to an eye', it is good law to serve as deterrence in a mundane society where heartless and dangerous citizens abound in plenty. In *Obidike v. State*<sup>55</sup>, the Supreme Court affirmed death sentence passed on the appellant for the murder and throwing a way of the body of their victim into Anambra River sometime in 1994. The celebrated case of *Chukwuemeka Kingsley Ezeugo v. State*<sup>56</sup>, is another compelling case for the approval of death penalty as deterrence to heartless persons who abound in society. In the words of N.S Ngwuta J.S.C. who delivered the Lead Judgment:

The fact of this case could have been lifted from a horror film. At all material times both parties agreed that the appellant was General Overseer of Christian Praying Assembly Ikeja, Lagos. It was agreed that he had a father-son and father-daughter relationship with the victims of the incident. The prosecution's case was that the appellant accused six of his people of immoral behaviour. He called them together beat each of them with many hard objects and after the beating he assembled them downstairs, made them to kneel down and he caused petrol to be poured on them and a struck match thrown on them. They all sustained various degrees of burns. While five of them escaped, the sixth of them who later died sustained 65 percent burns. You can imagine her last day in hospital.

The court thereby affirmed the judgment of the Court Appeal, Lagos and confirmed the death sentence. This of course is one of the reasons why death sentence as punishment cannot be questioned. Here 'a man of God' who ought to know better about sin and forgiveness sent a young girl to early grave because of his heartlessness and bestiality. Perhaps another shocking incident and crime of monumental absurdity was that which led to the execution of four armed robbers in Edo State in 2013. In this case, the robbers after dispossessing the victims of their

<sup>54</sup> (1999) 6 .N.W.L.R (pt 465)605

<sup>55</sup> (2014) 10 N.W..L.R (pt 1414) .S.

<sup>56</sup> See B. Oketola and A. Adesomoju "Rev. King Must Die by Hanging, Supreme Court Orders", *Punch Newspaper*, February 27, 2016 available at [www.punchng.com/rev-king-must-die-by-hanging-supreme-court-orders/](http://www.punchng.com/rev-king-must-die-by-hanging-supreme-court-orders/) accessed on May 14/2019 by 1pm.

valuables, went on to rape the wife of the householder. After raping the woman, the gang leader, Mr. Richard Igagu and his boys took a bottle and inserted into the vagina of the woman until she bled to death<sup>57</sup>. The Governor of the state duly exercised his power and signed the execution warrant and same was carried out<sup>58</sup>. The point being made is that this display of bestiality by the armed robbers justifies the imposition of death sentence as deterrence to those who have the tendency to embark on such acts. We are therefore in agreement with the retentionists that death penalty is the answer in this type of crime. Other cases which justify death sentence based on deterrence are hereby summarized<sup>59</sup>.

Five, the proponents of death penalty argue that it is a sort of self-defence by the state as it is incumbent on it to protect the citizens, which if not done will lead to its extinction<sup>60</sup>. It is necessary for the state to use necessary force to protect the vast majority of the citizens who are at the mercy of deviants. Hence, the state in providing for death penalty in its laws is merely defending itself and we agree with this postulation. We say so because one wonders what would be the case if all our laws are based on punishment predicated on term of years. The situation would have been horrific as killing could have been done or carried out as frequently as traffic offences and stealing.

Finally, the retentionists argue that Nigeria is not in breach of international law by having death penalty in her jurisdiction<sup>61</sup>. They argue that international treaty that is not domesticated in the country in accordance with *section 12 of the Constitution of Nigeria* cannot be binding on her. *Section 12 (1)* provides as follows:

No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

We in addition to the above, state that as a sovereign state, Nigeria is bound by her own laws and not those of other nations. Each nation has its interest to protect to the best of its needs and

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<sup>57</sup> See O.B. Ogbemudia “Edo Explains Execution of Criminals on Death Row” *the Nation Sunday Newspaper*, June 30,2013;p.6

<sup>58</sup> However, some human right activists opposed the execution, because they argue that the convicts appeal was still pending at the time of execution. If this was the case, it there means that the exercise was wrong in law.

<sup>59</sup> For example in the unreported case of *The State v. Onyebuchi Eze* (charge No.HAB/1c/2009) the Chief Judge of Ebonyi State, A.N Nwankwo sentenced the accused to death for unprovoked killing of the victim with dagger for no reason other than that the victim was walking along the road and discussing with a girl. The judgment was delivered at Ebonyi State High Court on March 7, 2014. In yet another case of *The State v. Friday Ominyi* (Charge No. HKW/3c/2004) unreported, B.A.N Ogbu, J.of Ebonyi State High Court sitting at Ezzangbo sentenced the accused to death for killing his girl friend in a farm when she reported to him that she was pregnant for him. The judgment was delivered on March 28,2014. Also in the case of *The State v. Nwabo Nwade* (Charge No. HAB/1c/2013-unreported) the accused was sentenced to death by A.N Nwankwo C.J Ebonyi State High Court, Abakaliki for the murder of 11 year old son of a man who caused his being made to pay fine because his goat ate the former's crops. Hence, he killed the boy because the father caused him to pay fine. Judgment was delivered on March 20, 2014.

<sup>60</sup> See O.O.C Uche & O.S. Benson, *op. cit*

<sup>61</sup> See A. Iwilade, *op.cit*

aspirations. Nigeria cannot because, it wants to be branded a civilized nation jump into the ship of countries that have abolished death penalty. In some countries such as U.S.A and Japan, it has been an unsteady business of abolition today and for reintroduction of same the next few months. This is the nature of national interest which each state sets out to protect. So far, Nigeria has done enough in recognizing those human right practices world over that agree with her present interests and should not be harassed into abolishing death punishment because some countries which have conducive environment for its abolition have done so. After all, these countries that emphasise abolition now some time ago saw nothing wrong with it because of national interests then prevailing in their area.

### **Recommendations:**

We have taken time to state the unbending views of the various camps on the abolition or retention of death penalty in Nigeria, together with our comments. However we have to take position and suggest possible ways to resolve the controversy.

Our first suggestion is that death penalty be abolished for all offences in Nigeria except that of murder or culpable homicide. In respect of all other offences such as armed robbery, treason, kidnapping, *coup de'tat*, treasonable felonies and etc. life imprisonment should be the punishment. However, where death results in the event of those other offences, the felon should still face death penalty. This suggestion if implemented will have the effect of reducing the number of those who will be facing death sentence. It will also bring the country closer to the class of the so called civilized nations of the world which have embraced abolition.

To say that death penalty should be scrapped totally will be asking for anarchy because reprisal killings will be the order of the day. In our predominantly illiterate environment, relatives of victims of murder will readily go for retaliation if the only punishment for murder is life imprisonment. We stand to be challenged. Our suggestion is also supported by the Holy Books and our traditional justice system which predate Christianity and Islam in Nigeria.

Second, the government as a matter of urgency should work out ways of making sure that those condemned to death are promptly killed after their rights of appeal or where such persons did not appeal at all. To keep on the death row people for years makes nonsense of our judicial system. This is because the time and energy of judicial officers are rendered childish when men who committed aggravated murder are granted pardon some 20 or 30 years after sentence, because the felon "has turned a new leaf". The Governor or President granting pardon is not in good position to appreciate the impact of his action on those who have the propensity to do evil in future. It is this none or rare implementation of death penalty by our governments that is now used to criticize it as a system of justice.

Three, it is our recommendation that lethal injection or any other quicker method of killing be evolved for the killing of condemned prisoners. This will quicken the death of those to be executed and save the prison authorities of the blames of slow and painful death usually associated with hanging on the neck or by firing squad or stoning.

Finally, we are of the opinion that there should be improvement in the investigation, trial and punishment for offences carrying death penalty. Thus when an offence involving death penalty is reported, the investigators must be specially trained officers who will observe all the rules associated with fair and just investigation. In the same vein, during trial, the defendant should

be given seasoned lawyers at the expense of the state instead of having N.Y.S.C (National Youth Service Corps) Lawyers or Legal Aid Lawyers to stand for poor accused persons with the attendant weak and poor defence. This will cure the fear of poor trials that may lead to killing of innocent persons when trials are poorly conducted.

## CONCLUSION

We have in the course of this work tried to explain the ordinary and legal meaning of death penalty or capital punishment and proceeded to look at some of the laws in Nigeria. We also looked at situations where the punishment may not be carried out either immediately or at all even when one is found to have committed the offence carrying death punishment.

We thereafter looked at the argument canvassed by opponents of death penalty as well as those of people in support of its continued retention. We made our comments in the course of the analysis and decided to pinch our tent with the retentionists. We did so because of the bestiality, barbarism and frequency of occurrence of murder cases even among enlightened elite and spouses in the middle class<sup>62</sup>. We also pinched our tent with the retentionists because we fear that abolition of death penalty now will do more harm to law abiding citizens as retaliatory killings will take central stage if killing of persons will only attract life imprisonment.

However, we made some concessions in our recommendations so that the offence that will attract capital punishment will only be where a person(s) lose their life as a result of the criminal act of the defendant. In every other crime, the punishment should be term of years climaxing with life sentence. It is our belief that if our law makers and or governments adopt our suggestions that the campaign against capital punishment in Nigeria will die natural death.

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<sup>62</sup> See T. John, “ Gunmen kill 2 P.D.P Chieftains in Rivers” *Daily Sun*, April 18, 2016, P.10; L. Obi, “Herdsman of Terror (2)” *Daily Sun*, May 2, 2016, P.37; H Umahi and S. Ani, “Nigeria; A killing Field” *Daily Sun*, March 29, 2016, pp. 40-41. S. Olatunji, “Man Beats wife to Death” *Daily Sun*, May 10, 2016, p.4; Wole Balogun, “ Ekiti: Man Kills Brother to Inherit His Okada” *Daily Sun*, Wednesday 11, September, 2019, p.5 and etc reported daily in the Country.