

THE QUALITY OF JUSTICE IS STRAINED: THE DEATH PENALTY IN NIGERIA.

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Introduction

“There is no doubt that over the past fifty years a global trend has emerged towards the abolition of the death penalty.”¹ Spread over the world including to some African countries, many scholars and advocates find the death penalty a violation of the international human rights standards.²

This paper reviews the arguments for that position as applied to international instruments adopted by Nigeria, as well as provisions of the Nigerian constitution that support the implementation of the death penalty. The paper, however, goes on to critically appraise flaws that riddle the Nigerian judicial system regarding the imposition of capital punishment. Even if one rejects the argument of the death penalty as a violation of international human rights standards per se, egregious flaws, like those reviewed in this paper, render the Nigerian death penalty, as applied, to be a violation of human rights standards. The paper also emphasizes the importance of a consistent standard for crimes, punishment, and administration of the criminal justice system throughout the country, standards that should be founded on the rule of law as against the rule of might, wits or opportunism.

Part I provides background on Nigeria, its legal system, and death penalty laws to assist the reader in assessing the flaws in death penalty administration identified in Part III. This Part also considers the parts of the Constitution of the Federal Republic of Nigeria emphasizing right to life and respect for the dignity of person, which support an argument against the death penalty as well as language that authorizes it. Part I closes with evidence from Nigeria and elsewhere contradicting the deterrence rationale used in Nigeria and elsewhere to justify the death penalty.

Part II reviews how international law increasingly recognizes not only that particular ways of administering the death penalty are a violation of international norms, but also that the imposition of the death penalty itself constitutes a human rights violation. I consider this body of international human rights law against the law and practices of Nigeria.

Part III reviews a number of examples of the flaws that riddle the Nigerian legal system.

Part IV concludes that Nigeria should re-examine her policies on death penalty.

⁺ For helping me with this Paper, I thank Professors Leah Wortham and Faith Mullen. For supporting me through law school and life, I thank my parents, Regina and late Christian Onuoha. Finally, I express my love to my daughter, Miriam Onuoha-Mbah whose love and affection I sacrificed in the course of completing this program.

I. The Death Penalty in the Nigerian Legal System

A. The Nigerian Legal System

Nigeria is a federal system with both a set of federal criminal and state criminal laws. As described more fully below, the definition of crimes, including those eligible for the death penalty is further complicated by the division of the country into a northern and southern region, with a differing criminal code for each.

Criminal offenses involving the violation of federal laws such as smuggling contraband, counterfeiting, or the possession of marijuana or narcotic drugs, treason, homicide and armed robbery are usually tried in a Federal High Court because they are federal crimes, although sometimes drug and currency offenses are tried by special tribunals, such as Recovery of Public Property (Special Military Tribunal). All other crimes are state crimes.

The Nigerian legal system continues to show considerable British influence with English law forming a substantial part of Nigerian law. However, the Nigerian legal system is somewhat complex and has several sub-systems. A general federal legal system is applicable throughout the country. At the lower levels, each state (including the new capital Abuja) has its own legal system. Also, local customs are applicable laws in some states. For the purposes of this paper, I will give a brief history of Nigerian criminal codes for easy understanding of how they work while elaborating on the laws that deal with death penalty in Nigeria.³

The Criminal Code was originally introduced to the Protectorate of Northern Nigeria in 1904 by the Colonial Governor of the Northern Protectorate, Lord Lugard. It was modeled after a code that was introduced into the State of Queensland, Australia in 1899 by Britain. After the uniting of the Southern Protectorates in 1906 and the subsequent uniting of the Southern Protectorates with the Protectorate of Northern Nigeria in 1914, Lord Lugard made the Criminal Code of 1904 applicable to all the Protectorates in Nigeria.⁴

1. CARLO .A. GHERARDI, THE DEATH PENALTY: FROM ACCEPTANCE TO UNIVERSAL ABOLITION IN 100 YEARS? 1, (2008).

2. LILIAN CHINWI, TOWARDS THE ABOLITION OF DEATH PENALTY IN AFRICA (2007).

3. For more on customary law, *see* A.A. KOLAJO, CUSTOMARY LAW IN NIGERIA THROUGH THE CASES, (2000).

4. DR. ROBERT WINSLOW, CRIME AND SOCIETY - A COMPARATIVE CRIMINOLOGY TOUR OF THE WORLD *available at* <http://www-rohan.sdsu.edu/faculty/rwinslow/africa/nigeria.html>

In 1959, the Criminal Code which was used throughout Nigeria did not apply to Northern Nigeria. Throughout the colonial era, the courts in the northern region of Nigeria lacked professionally trained personnel in criminal law. In addition, the British judges were uncertain how to deal with the Emirs in regard to various offenses and punishment under the Islamic (Maliki) Law.⁵ As a solution, a panel of jurists was set up to introduce a Penal Code that would take into account Moslem interests, values, and standards. Because Sudan was an Islamic State where the Muslim laws were similar to those of Northern Nigerian Moslems, the jurists modeled the Penal Code law after the Sudanese Penal Code. The northern Nigerian Penal Code law applies to all persons living in Northern Nigeria, about 70% of who are Muslims.⁶

1. Sources of Nigerian Law

The sources of Nigerian law include:

a. The Constitution of the Federal Republic of Nigeria

The 1979 Nigeria constitution was suspended after 1983, the May 3, 1989 constitution was never implemented, and the 1999 constitution (based largely on the 1979 constitution) was promulgated by decree on May 5, 1999; it took effect on May 29, 1999, when an elected civilian government took office following 15 years of military rule.⁷ The 1960 Constitution of the Federation of Nigeria was a compromise between the British colonial power and the ruling blocs which emerged from colonialism. The present Constitution is a continuation of that compromise, but with the international community replacing the colonial power.⁸

b. The Received English Law

English law was introduced into Nigeria by Nigerian legislature. The English law received includes the common law, the doctrines of equity and the statutes of general application made before January 01, 1900 and extended to Nigeria, which are not yet repealed.⁹

5 The Emir is the Head of a group of Moslem counties. The Emirs are the traditional rulers of the Moslem areas.

6. See WINSLOW, *supra* note 4, at 4

7. U.S Department of State, Sources of Nigerian law, CONSTITUTION, GOVERNMENT & LEGISLATION, (July 15, 2010, 11:23 AM), <http://jurist.law.pitt.edu/world/Nigeria.htm>

8. Edwin Madunagu, Sources of Nigerian law, THE NIGERIAN CONSTITUTION (Aug. 9, 2010, 08:10 AM), http://nigerdeltacongress.com/narticles/nigerian_constitution.htm

c. Nigerian Legislation

“The Constitution of the Federal Republic of Nigeria 1999 regulates the distribution of legislative business between the National Assembly, which has power to make laws for the Federation and the House of Assembly for each State of the Federation. The current legislation in force at the federal level is largely contained in the Laws of the Federation of Nigeria 1990 (LFN). Federal laws under the Military, known as Decrees, and state laws, known as Edicts, form the bulk the primary legislation. Each of the 36 states and the Federal Capital Territory (FCT) Abuja has its own laws.”¹⁰

d. Customary law

The customary law is categorized into ethnic or non-Moslem law (indigenous law that applies to the members of the different ethnic groups; it is not written) and Moslem law or Shari’a (based on the Islamic religion; it is written). The ethnic law is applicable in the southern part of the country, while the Moslem law is applicable in the northern part.¹¹

e. Judicial precedents

This is otherwise called case law. It consists of law found in judicial decisions. A judicial precedent is the principle of law on which a judicial decision is based. It is the reason for decision *i.e.*, *the ratio decidendi*. Only the pronouncement on law in relation to the material fact before the judge constitutes a precedent.¹²

2. The Criminal Law

Criminal law is that part of the law dealing with crimes being committed. A crime or an offense is an act or omission punishable by the state, which is already contained as an offense in the written law. Criminal proceedings are carried out mainly to punish the alleged wrongdoer. Criminal proceedings are controlled by the state although private persons may sometimes institute such proceedings.

9. Tahir Mamman, Sources of Nigerian law, THE THREE MOST IMPORTANT THINGS ABOUT MY COUNTRY'S LEGAL SYSTEM THAT OTHERS SHOULD KNOW, 171 (July 15, 2010, 11:45 AM) <http://www.ialsnet.org/meetings/enriching/mamman.pdf>

10. Yemisi Dina, John Akintayo & Funke Ekundayo, GUIDE TO NIGERIAN LEGAL INFORMATION, (2005) available at <http://www.nyulawglobal.org/globallex/nigeria.htm>

11. *Id.*

In the majority Christian southern states of Nigeria, the Criminal Code Act Chapter 77 Laws of the Federation of Nigeria 1990 are used to punish offenders. Crimes are classified by their seriousness as, felonies, misdemeanors or simple offenses. The seriousness of the crime is supposed to determine the length of jail time or the bail amount. Southern states also classify crimes by whether or not they are indictable. Indictable offenses are based on being previously written in the law, or have a certain bail amount, or have a certain jail term to be served.¹³

The Penal Code Law (Cap. 89) Laws of Northern Nigeria 1963 are used to address the crimes in the North. It prescribes punishment for offences not provided for in the Qur'an. The Qur'an picked up only a few outstanding offences, and even then prescribed only the extreme penalty for them, *i.e.*, where the offence occurs in its most aggravated form. The law was woven from tribal customs¹⁴

Although the practice of Shari'a in personal and civil matters had been accommodated by the British and by Nigeria's various Constitutions, in 1999 Shari'a was extended from civil to criminal matters, thus producing such punishments as decapitation, amputation, and stoning to death, threatening the well-being of non-Muslims, endangering fundamental rights protected by Nigeria's federal Constitution, and posing significant challenges to elected officials and federal courts. The extension of Shari'a to criminal law in 12 northern states also has increased inter-communal and intergovernmental conflict, threatening the fabric of Nigerian federalism.¹⁵

3. The Court System

Paralleling the system of law, there also are federal and state courts in Nigeria. All of the courts, except some Northern states' district courts, have criminal jurisdiction. Nigerian

courts that have jurisdiction to impose the death penalty fall within the following levels, from the highest to the trial court:¹⁶

12. For more information on the sources of Nigerian law, *see* ONEYEBUCHI T. UWAKAH, *DUE PROCESS IN NIGERIA'S ADMINISTRATIVE LAW SYSTEM: HISTORY, CURRENT STATUS AND FUTURE*, 78 (1997).

13. Indictable offences are offences that can be prosecuted in court and with a penalty of more than one year imprisonment, while non-indictable offences are those punishable with less than one year imprisonment.

14. C. M. Shafqat & J. N. D. Anderson, *Northern Nigeria Penal Law*, 25 *MODERN L. REV.* 268 (1962).

15. "Political Shari'a"? *Human Rights and Islamic Law in Northern Nigeria*, 16, *HUM. RTS. WATCH*, 15, no. 9, (2004).

SUPREME COURT: The Supreme Court acts as the Final Court of Appeal and a Superior Court of Records. It is not a court of original jurisdiction. The Supreme Court can hear appeals from the Federal Court of Appeal.

FEDERAL COURT OF APPEAL: This is a superior court (of record). It is mainly a court of appeal and has exclusive jurisdiction to hear appeals from the State High Courts, the Federal Revenue Court, and other courts as specified by law.

COURTS OF RESOLUTION: This is a court mostly in the Northern states, and it has the jurisdiction to resolve conflicts between the High Court and the Shari'a Court of Appeal., or to decide which court has jurisdiction in cases where both decide that they do not have the jurisdiction. The decision of the Court of Resolution is final; there is no appeal.

SHARI'A COURTS OF APPEAL: This is a superior customary court of record which hears appeals from the Upper Area courts in cases that involve Muslim personal law.¹⁷

STATE HIGH COURTS: The State High Court is the highest court in each state, although some states have a Court of Appeal which sits above the High Court. This court is where a death penalty prosecution originates. If customary and area courts exist in the state, the High Court's do not deal with customary laws.¹⁸ Their jurisdiction is usually determined by the subject type. They can hear appeals from the lower courts.¹⁹

16. The definitions of the following terms are necessary for a full understanding of the court hierarchy:
Superior Court: Courts that have 'unlimited' jurisdiction.

Inferior Court: Courts whose jurisdiction limits depend on the type and value of the subject matter.

Court of Record: A court which has the power to punish contempt.

17. Customary courts are native courts created to address disputes that originated among the local communities. It was neither established nor controlled by statutes. E.I. Nwogugu, *Abolition of customary courts: The Nigerian experiment* 20 J. AFR. L. 1, n. 1 (1976). But in 1900, the crown took over from Niger Company and by the Native Courts Proclamation n. 9 of 1900 established native courts on a statutory basis in the protectorate of southern Nigeria.

18. They are courts which exist in the northern states, and deal with issues that are covered in the native law. They have unlimited civil jurisdiction in cases of family law and criminal jurisdiction in a few areas

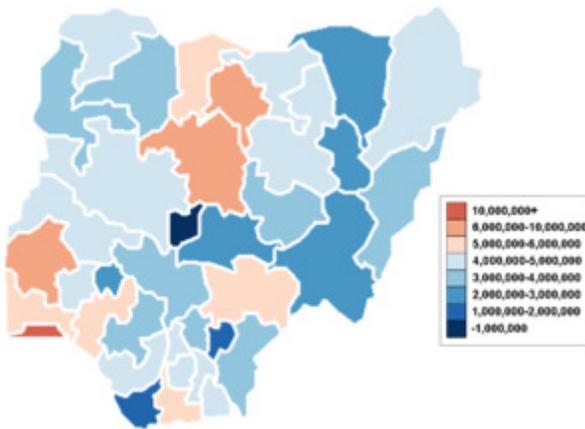
19. O. Boomie, Court System, MOTHERLAND NIGERIA (May 23, 2010, 10:45 AM), <http://www.motherlandnigeria.com/legal.html>

4. Nigerian Demographics

No one knows how many Nigerians there are, and it is said that until now the authorities have been too afraid to find out. Censuses are thought to be unreliable. Critics have charged that the government has been reluctant to seek an accurate count because some had hoped to use the census to justify demands for more recognition and power, especially during elections.²⁰ Legend has it that one out of every five black people on earth is a Nigerian. Every headcount held in Nigeria in the past 30 years has ended in national controversy and with strong allegations of population inflation.²¹

Nigeria is the most populous country in Africa. It accounts for approximately one-sixth of Africa's people. The variety of customs, languages, and traditions among Nigeria's 389 ethnic groups gives the country considerable cultural diversity. Census figures are used to determine regional funding and representation of ethnic and religious groups in government service. This provides an incentive for inflating local populations. Professor J.G. Ottong, a social scientist at the University of Calabar, explained that population has been a sensitive and controversial issue "because of its implications for shaping regional, state and ethnic relations and balance of power." In the past, census figures were believed to have been manipulated for political advantage.²²

Population Density²³



20. Sola Odunfa, Population Density, NIGERIA'S COUNTING CONTROVERSY, (July 08, 2010, 11:12 AM), <http://news.bbc.co.uk/2/hi/africa/4512240.stm>Legend

21. *Id.*

22. *Id.* at 20.

According to the United Nations, the population of Nigeria as of July 2010 is estimated to be over 158 million.²⁴ These estimates explicitly take into account the effects of excess mortality due to AIDS; this can result in lower life expectancy, higher infant mortality, higher death rates, lower population growth rates, and changes in the distribution of population by age and sex than would otherwise be expected. The United Nations Population Division projects that population of Nigeria will be well over 289 million by 2050. Nigeria will then be the 8th most populous country in the world.²⁵

5. History of the Legal System

British influence and control over what would become Nigeria and Africa's most populous country grew through the 19th century. As a result of this, the Nigerian legal system is based on the English common law legal tradition by virtue of colonization and the attendant incidence of reception of English law through the process of legal transplant. English law has a tremendous influence on the Nigerian legal system, and "English law forms a substantial part of Nigerian law."²⁶ Nigeria is a country that has a mixed legal system where the Common Law, Islamic Law and Customary Law cohabit, albeit not in a happy equal partnership.²⁷

6. Shari'a Law

Shari'a is used to refer to the sacred law of Islam. It is a set of religious rules that are observed in various ways around the Islamic world. Islamic Shari'a is part of the religion and is part of the way of life of a Muslim. Shari'a guides all aspects of Muslim life including daily routines, familial and religious obligations, and financial dealings. It is derived primarily from the Quran and the Sunna—the sayings, practices, and teachings of the Prophet Mohammed.²⁸

The word Shari'a means "the path to a watering hole" but is often translated as "the way" or "the path." It offers guidelines for everyday life, including prayers and donations to the poor. As addressed in the Quran, Shari'a prescribes modest dress for both men and women and has been interpreted to require such arrangements in daily life as single-sex schools and transportation.²⁹

Figures released from Nigeria's census say the country's mainly Muslim northern states accounted for just over half of the country's 140 million population. This is roughly the same result as shown in the last census 15 years ago. The northern state of Kano was the most populous with 9.4 million people, just ahead of Lagos state with 9 million.³⁰ The results maintain the status quo, despite claims by many in the largely Christian south that they are numerically superior.

23. Population density, (July 08, 2010, 1:58 PM), http://commons.wikimedia.org/wiki/Atlas_of_Nigeria

As indicated previously, religion and ethnicity are major issues in Nigeria and the census becomes a political issue as the religious and ethnic groups within the country hope to attain more recognition and power, especially during elections.

A state's population affects its budget and to an extent its representation in government. More generally, in national politics, the larger a region's population the more it claims a right to the country's leadership. In 2007, the major contenders for the presidency were all Muslim men from the north. However, in recent times, Christians are gradually emerging as presidents. On January 13, 2010, Dr. Goodluck Ebele Jonathan, born in 1957 in the oil-rich Niger Delta region, and a Christian from the Ijaw ethnic group, was sworn in as the president of the Federal Republic of Nigeria.³¹ Such is the inherent controversy of the statistics; a person's religion and ethnicity were deliberately left off the questionnaire when the census was conducted in March 2006. Nigeria's population is now 140 million, an increase of 63% in just 15 years.³²

The most numerous ethnic group in the northern two-thirds of the country is the Hausa-Fulani, the overwhelming majority of whom are Muslim. The Yoruba people are the most numerous in the southwest. Over half of the Yorubas are Christian and about a quarter are Muslim, with the remainder following mostly traditional beliefs. According to CIA-World Factbook, Nigerians are 50% Muslim, 40% Christian, and 10% indigenous beliefs.³³

24. Nigerian Populations, WORLD POPULATION PROSPECTS: 2008 REVISION POPULATION DATABASE, (July 8, 2010, 2:06 PM), <http://esa.un.org/unpp/p2k0data.asp>

25. *Id.*

26. *See* A.O. OBILADE, THE NIGERIAN LEGAL SYSTEM (1979) for more information on the topic.

27. DR. TAHIR MAMMAN, THE ROLE OF CULTURE IN TEACHING ABOUT OTHER LEGAL SYSTEMS, 1, (2008).

28. LAUREN VRIENS, ISLAM: GOVERNING UNDER SHARI'A, (2009).

29. Abdur Raman I. DOI, Shari'a Law, WOMEN IN SOCIETY: MODESTY, (June 04, 2010, 09:43 AM), <http://www.usc.edu/dept/MSA/humanrelations/womeninislam/womeninsociety.html>

30. Alex Last, Shari'a Law, NIGERIA CENSUS REVEAL NO CHANGE, <http://news.bbc.co.uk/2/hi/africa/6246057.stm>

31 Profile: Goodluck Jonathan, Nigerian's new leader, *available at* <http://news.bbc.co.uk/2/hi/africa/8510390.stm>

32. *Id.* at 30.

Some states in Nigeria enforce Shari'a. Out of Nigeria's 36 states, 12 re-adopted a strict version of Shari'a in 1999 nearly a century after it had been abandoned.³⁴ The new Shari'a penal codes includes death by stoning for behavior termed as zina the perpetrator of which is defined as "whoever, being a man or a woman fully responsible, has sexual intercourse through the genital [sic] of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act". Zina was previously punishable by flogging for Muslims under the Penal Code. However, in the States that have introduced new Shari'a penal codes, zina now carries a mandatory death sentence if the accused is married, while 100 lashes is the mandatory sentence if the accused is not married. This offense and these penalties apply to Muslims only.³⁵

B. History of the Death Penalty in Nigeria

The death penalty has been used from earliest times, and by different societies the world over, as a means of punishing various types of proscribed conduct. A glance into penal history shows that it has been a feature of ancient legal systems.³⁶ The Babylonians, Assyrians, Hittites and ancient Hebrew have records showing that death penalty was reserved for offences such as homicide, heresy, sexual aberrations and so on.

The death penalty was rarely used in traditional African society, and then only in cases where the offender was deemed a threat to the peace and security of the community, and the community felt otherwise unable to cope with the problem.³⁷ Offences such as murder, witchcraft, profaning the gods or spirits, and repeated thefts, could all give rise to the death penalty, however, most traditional societies preferred to employ banishment as an alternative to death penalty. Customary criminal law was effectively abolished by the 1960 Constitution of Nigeria, which provided that- "No person shall be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law..."³⁸

33. Central Intelligence Agency, Nigerian population, THE WORLD FACTBOOK, (July 15, 2010, 02:45 PM), <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>

34. Shari'a, the Muslim code for living, was practiced in Nigeria for centuries until the arrival of the British in the early 1900s. In 2000, Muslim-Christian violence was sparked by the reintroduction of Shari'a in several Northern states. See Lara Maupin, Shari'a Law, Background, Activities & Critical Analysis, available at http://www.pbs.org/newshour/extra/teachers/lessonplans/world/nigeria_4-23.html

35. Sections 124 & 125 of the Penal Code of Northern Nigeria. Section 124:
Whoever, being a man or a woman fully responsible, has sexual intercourse through the genital of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act, is guilty of the offence of zina.

Section 125:

Whoever commits the offence of zina shall be punished:-

(a) With caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for a term of one year; or (b) if married, with stoning to death (rajm).

36. Professor .M. Ikhariale, *Death Penalty in Nigeria: A Constitutional Aberration*, J. HUM. RTS. L. (1991).

37. Isabella Okagbue, *The death penalty from a human rights perspective*, 1995 CURRENT L. REV. 144

The British introduced the Criminal and Penal Codes, both of which are based upon the common law principles, which contain a number of capital crimes. The Penal Code Federal Provisions Act of 1959 applicable to northern states (hereinafter referred to as the Penal Code), and the Criminal Code Act applying in southern Nigeria of 1961 (hereinafter referred to as the Criminal Code) all prescribe the death penalty for a range of criminal offences. Under the Criminal Code, murder, treachery, treason and participating in a trial by ordeal resulting in death, attract death penalty.³⁹ The northern penal code includes additional capital offences, namely;

- (1) Giving false evidence in a trial which leads to the execution of an innocent person;
- (2) Abetting the suicide of a minor, a mentally abnormal or drunken person, and
- (3) In the case of a person already serving a life sentence, attempting to commit culpable homicide.
- (4) Sodomy
- (5) Adultery (zina)
- (6) Apostasy (ridda)
- (7) Rebellion (bag'yi) and
- (8) Hiraba, translated as highway robbery⁴⁰

C. Legal Framework of the Death Penalty

1. Crimes for which the Death Penalty can be imposed

Nigeria customary laws traditionally recognized the death penalty as an appropriate way of eliminating offenders who were dangerous to the community. Offences warranting the death penalty included murder, witchcraft, adultery and profaning of the gods. With the advent of British rule, the consequent abolition of customary criminal and penal codes, capital crimes were reduced to include murder, treachery, treason and participating in a trial resulting in death.⁴¹ The military government in power from 1966 to 1979 added a number of crimes punishable by death.⁴² These additions include armed robbery, setting fire to public buildings, ships or aircraft, dealing in Indian hemp and sabotaging the production and distribution of petroleum products, importing and exporting mineral oil without authority, dealing with cocaine and counterfeiting bank notes or coins. More recently, the punishment of most of these offences has however been reduced to terms of imprisonment. Today Nigerian Federal law prescribes the death penalty only for treason, homicide and armed robbery.

Recently, kidnapping has been added as a capital crime in most states.⁴³ The Imo State House of Assembly passed a bill on May 04, 2009 providing for the death penalty for anyone convicted of kidnapping or whose premises are used by a kidnapper to hold someone hostage. Justice Goddy Anunihu of the Owerri High Court said detained leader of the Movement for the Actualization of the Sovereign State of Biafra (MASSOB),

38. Section 21(10) of the 1960 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA. *See also* Section 36 (12) of the 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA on the same issue.

Chief Ralph Uwazuruike,⁴⁴ who is facing trial over alleged kidnapping and hostage taking risked death penalty on conviction.⁴⁵

2. The Death Penalty and the Nigerian Constitution

All the Nigerian Constitutions have reiterated that every person has the right to life. Section 33(1) of the 1999 Constitution provides that, “Every person has a right to life, and no one shall be deprived intentionally of his life...”⁴⁶

Section 34(1) of the same Constitution further provides that, “Every individual is entitled to respect for the dignity of his person, and accordingly –

- a. no person shall be subject to torture or to inhuman or degrading treatment;
- b. no person shall be held in slavery or servitude; and
- c. no person shall be required to perform forced or compulsory labor.”⁴⁷

39. Sections 319, 49(a), 37, 38 and 208 respectively of Criminal Code.

40. Philip Alston, Rep. of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, http://www.extrajudicialexecutions.org/application/media/Nigeria%202006%20Report%20E_CN_4_2006_53_Add_4-1.pdf, U. N.Doc. E/CN.4/2006/53/Add.4 (Jan. 07, 2006).

41. Sections 319, 49(a), 37 & 208 of the Criminal Code respectively.

42. The first military intervention in Nigeria occurred in January 1966 when the civilian government was overthrown in a military coup. This effectively marked the beginning and succession of military governments in the nation's political history. Military-rule continued till 1979 when the then Head of State, General Olusegun Obasanjo handed over power to the civilian government of President Shehu Shagari. *See* Embassy of the Federal Republic of Nigeria, Washington D.C. and Globe Scope, Inc., Legal Framework, NIGERIA: PAST, PRESENT AND FUTURE, (June 01, 2010, 11:12 AM), <http://www.nigeriaembassyusa.org/nppf.shtml>

43. Dupe Atoki, Death Penalty - a Dying Fashion, VANGUARD NEWSPAPER, May 06, 2010 *available at* <http://allafrica.com/stories/201005061113.html>
Following the recent jail break in Kaduna, the governors rising from their Forum recently gave a matching order for the execution nationwide of inmates on death row. In their wisdom this is the panacea to the prison congestion and jail break.

44. For more information on Uwazuruike and his Biafran creation, visit <http://www.nigeriansinamerica.com/articles/3305/1/Massobite-Ralph-Uwazuruike-Rumbled-By-US-Agents/Page1.html>

45. Val Okara, Kidnapping: Uwazuruike Risks Death Penalty On Conviction, NIGERIA BEST FORUM, February 18, 2010 *available at* <http://www.nigerianbestforum.com/index.php?topic=65951.0>

46. Sec. 30(1) of the 1979 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA

Despite this broad assertion of the right to life, the final clause of previously quoted Section 33(1) says "...save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria."

The power of the state to prescribe death as a punishment for a criminal offence needs to be considered in the light of the constitutional right to the dignity of the human person. Admittedly, the constitutional guarantee of the right to life is subject to a provision in favor of a death sentence ordered by a court as punishment following on a conviction for a criminal offence. The power of a court to impose a death sentence depends on the constitutional validity of law authorizing killing as punishment for crime, which in turn depends on whether, or in what circumstances the death penalty may be an inhuman or degrading treatment.⁴⁸

While some authors have insisted that the death penalty is inhuman and degrading punishment, and therefore unconstitutional, the Nigerian courts in a plethora of cases have held otherwise.⁴⁹ The court of Appeal in *Adeniji v. State* has held that "The death penalty as per Sections 33(1), 233(2), 243 of the constitution is expressly recognized by the said Constitution."⁵⁰ The Supreme Court in *Okoro v. State* stated that the death penalty and its method of execution is lawful and valid as same is sanctioned by both Sections 33(1) and 34 (1) (a) of the 1999 Constitution.⁵¹

In *Kalu v. State* the Supreme Court states the Nigerian position as it held that "... under S. 33 (2) of the 1999 Constitution, the death penalty can by no stretch of the imagination be said to have proscribed or outlawed the death penalty."⁵² As further expressed by Kutigi J. S. C. that "... it is clear that death penalty per se which is prescribed by S.319 (1) of the Criminal Code cannot under any circumstances amount to torture or inhuman or degrading treatment which is what is prohibited under S.34 (1) (a) of the Constitution. What may amount to torture or inhuman or degrading treatment will be the method or procedure or manner of way in which a condemned prisoner is kept or executed."

47. Sec. 31(1) *id.*

48. B.O NWABUEZE, THE PRESIDENTIAL CONSTITUTION OF NIGERIA, 411 (1982).

49. PROFESSOR JOLANDI LE ROUX, THE IMPACT OF THE DEATH PENALTY ON CRIMINALITY, 11(2002) and Thio, Li-Ann, *The Death Penalty As Cruel And Inhuman Punishment Before The Singapore High Court? Customary Human Rights Norms, Constitutional Formalism And The Supremacy Of Domestic Law In Public Prosecutor V. Nguyen Tuong Van*, 4, OXF. UNI. COMMONWEALTH L. J. 213, (2004) among several others.

50. *Adeniji v. State* (2000) 645 RNWLR 356 (Nigeria).

51. *Okoro v. State* (1998) 14 NWLR 584 (Nigeria).

Professor Nwabueze, however, opines that the general principle is that a punishment that denies a person status as a human being or which degrades his personality as a human being is inhuman.⁵³ The American Supreme Court in *Furman v. Georgia* laid down four tests for the determination of the “cruel and unusual” contents of any form of punishment to be;

- (a) Is it degrading?
- (b) Is it wholly arbitrary?
- (c) Is it rejected by society? and
- (d) Is it patently unnecessary?⁵⁴

Applying these tests, the court held that “... In sum, the punishment of death is inconsistent with all four principles: death is an unusually severe and degrading punishment, there is a strong probability that it is inflicted arbitrarily; its rejection by contemporary society is virtually total, and there is no reason to believe that it serves any penal purpose more effectively than the less severe punishment.”⁵⁵

Professor Mike Ikhariale concludes that the punishment of death does not therefore comport with human dignity.⁵⁶ There is yet no way can the state carry out the death penalty without either being severally painful or inhuman, thus the Nigerian practice of public executions is therefore an aberration. In the words of Obiora Obeagu, a Death Penalty Abolition Advocate, the Nigerians of today do not take delight in watching the slaughtering of “government chickens.”⁵⁷

The overall rationale of Nigerian cases upholding the death penalty is the value of the punishment in deterrence. In *Akinyemi v. State*, It was held per Fabiyi J. C. A. On the propriety, justification of death sentence that, “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.”⁵⁸ On the execution of Sani Yakubu Rodi, the first victim of death penalty prescribed by the Islamic legal code, Shari’a, the secretary to the Sokoto State Government, Alhaji Mohammed Isa Katsina said that, “The punishment would serve as deterrent to others.”

52. *Kalu v. State* (1998) 13 NWIR 537 (Nigeria).

53. See Nwabueze, *supra* note 48, at 15.

54. *Furman v. Georgia* 403 U.S. 952, 91 S.Ct. 2282, 29 L.Ed.2d 863, (1971)

55. *Id.*

56. Professor Mike Ikhariale, J. HUM. RTS. L. & PRAC. (1991). He was the Dean of Law at the Lagos State University, Nigeria. He also is a Professor of Law at Harvard University Law School Cambridge, Massachusetts.

57. Obiora Obeagu, Death Penalty And The Nigerian Const., RE: DEATH PENALTY SHOULD BE ABOLISHED...IT WOULD BE A BIG MISTAKE (June 07, 2010, 12:35 AM), <http://www.thisdayonline.com/archive/2003/03/04/20030304law04.html>

However, despite all these claims of the deterrent nature of the death penalty, in 1996, a Nigerian newspaper wrote that: "despite these executions, crime wave, most especially armed robbery, has continued to be on the increase. Between 1991 and 1993, there were 7,538 reported cases of armed robbery..." The paper also mentioned that between September and October 1995, "over 1,200 armed robbery suspects died in gun battles with security operatives in Lagos State alone while no fewer than 15,000 are in various detention camps in Lagos."⁵⁹

While the Nigerian courts continue to refer to the death penalty's value in deterrence, much evidence shows little effect in that regard. Many countries have carried out studies which show that the death penalty does not deter crime. Thus, in a study undertaken by Professor Adeyemi in Nigeria, it was found that the average rate of armed robbery actually increased by 12.5% in the 16 years period 1971-1985 after the introduction of death penalty for that offence.⁶⁰

Former President Olusegun Obasanjo has on many occasions expressed his opposition to the death penalty in general. However, the death penalty is still on the statute books in Nigeria. The Constitution of the Federal Republic of Nigeria (1999) does not prohibit its application. Accordingly, Section 33(1) permits the derogation of the right to life "in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria".

D. Application of the Death Penalty

In Nigeria, executions are often shrouded in secrecy, and officials' words are not always accurate.⁶¹ Amnesty International is aware of the Nigerian courts having imposed at least 33 death sentences since 1999. Of these, at least 22 were handed down under the Criminal Code or the Penal Code. As of July 2003, according to the Prison Rehabilitation and Welfare Action (PRAWA), a Nigerian human rights organization, there are in total 487 people awaiting the execution of their death sentence in Nigeria, 11 out of these are women. Official statistics from the headquarters of the Nigerian Prison Services, states that the figure is 448 as of 20 January 2004. To the knowledge of Amnesty International executions are being carried out both under the Penal Code, the Criminal Code and new Shari'a penal law. The last person to be executed under the Shari'a penal code was Sani Yakubu Rodi who was hanged on January 3, 2002.⁶²

58. *Akinyemi v. State* (1999) 6 NWLR 465, 607 (Nigeria).

59. Amnesty International, *AFRICA: A NEW FUTURE WITHOUT THE DEATH PENALTY*, (July 16, 2010, 12:17 PM), <http://asiapacific.amnesty.org/library/Index/ENGAFR010031997?open&of=ENG-392>

60. Isabella Okagbue, *supra* note 37, at 12.

61. AMNESTY INTERNATIONAL, *NIGERIA: WAITING FOR THE HANGMAN* 32 (2008).

As a result of the increased interest in and debate on the propriety or otherwise of the death penalty in Nigeria, President Chief Olusegun Obasanjo initiated a parliamentary debate on the issue which commenced on November 13, 2003. In furtherance of this process the Attorney General of the Federation Minister of Justice inaugurated a panel of experts which was to serve as the National Study Group on the Death Penalty with 12 members representing different aspects of the Nigerian society. Amnesty International was invited to supply documentation on the death penalty. The National Study Group was expected to produce their final recommendations in June 2004.

In October 2004, presenting its report to the Federal Government, the National Study Group on the Death Penalty called on the government to impose a moratorium on executions and commute to life imprisonment the sentences of all death row prisoners whose appeals have been concluded. Furthermore, The Study group called for all executions to be put on hold until the Nigerian justice system can deliver fair trials and due process. As the report puts it "a system that would take life must first give justice". As a former Commissioner with the National Human Rights Commission, the writer had visited several prisons and observed that the conditions under which inmates are held are inhuman, degrading and violate the rights of detainees.⁶³

Despite the recommendations made by the National Study Group, recently, some governors have suggested that prison congestion is a rationale for carrying out the death sentence for those already convicted. On April 20, 2010, majority of the state governors in Nigeria backed the execution of the prisoners on death row to clear space in the overcrowded jails. "It was agreed that those people who have been condemned should be executed accordingly," said Theodore Orji, governor of the south-eastern state of Abia, after a meeting of the 36 state governors in Abuja. It was alleged that about 330 prisoners are on death row in a country where capital punishment remains on the statutes despite rarely being implemented. The governors, who have the power to sign execution orders, said also that 80 percent of Nigeria's prison population are awaiting trial and efforts should be made to "leave go"⁶⁴ those serving lengthy remands, according to Orji. Koyode Odeyemi of the Nigerian Prison Service told Agence France Presse that 36,000 of the 40,106 inmates are awaiting trial.⁶⁵

62. AMNESTY INTERNATIONAL; AFR 44/017/2004; May 21, 2004.

63. DUPE ATOKI, *supra* note 43, at 14.

64. Governor Theodore Orji did not make clear whether he meant executing them or pardoning such prisoners.

As mentioned earlier, the shrouded nature of executions in Nigeria is responsible for the discrepancy in numbers proffered by various news reports of prisoners awaiting the death sentence. According to a BBC report, 820 prisoners on death row in prisons across Nigeria recently sued the 36 State Governors and the Comptroller-General of Prisons before a Federal High Court, seeking an order to stop their planned execution. The prisoners alleged that carrying out the death penalty is cruel and inhuman, because some have cases in court challenging their conviction and sentences or challenging the mandatory provisions they were sentenced under.⁶⁶

1. Drug-Related Crimes

Some African countries have used the death penalty against drug trafficking and some are considering doing so.⁶⁷ In 1996 the Chairman of the Nigerian National Drug Law Enforcement Agency, Major-General Musa Bamaïyi, reportedly said he had persuaded the Nigerian government to reintroduce the death penalty for drug offences and said further that once the new law takes effect "90 per cent of the traffickers will go into other trades."⁶⁸ Yet the experience of nations worldwide has produced no clear evidence that the death penalty has had any identifiable effect in alleviating drug trafficking and abuse. According to the report of a meeting of the UN Expert Group on Countermeasures to Drug Smuggling by Air and Sea:

...in the experience of several experts, the fact that capital punishment appeared on the statute books as the maximum penalty did not necessarily deter trafficking; indeed in some cases, it might make prosecution more difficult because courts of law...inclined to require a much higher standard of proof...The most effective deterrent was assuredly the certainty of detection and arrest.

65. The death penalty and the Nigerian Constitution, Applicability of the death penalty, HANDS OFF CAIN, (June 16, 2010, 1:02 PM),

<http://www.handsoffcain.info/bancadati/schedastato.php?idstato=13000144&idcontinente=2566>. *Id.*

66. *Id.*

67. Zimbabwe and Egypt

68. Amnesty International, AFRICA: A NEW FUTURE WITHOUT THE DEATH PENALTY, (July 12, 2010, 5:30 PM), <http://asiapacific.amnesty.org/library/Index/ENGAFR010031997?open&of=ENG-392>

2. Statistics Record of Capital Crimes Committed Per State in Nigeria for the Period 2004-2007⁶⁹

TABLE A

	MURDER				ARMED ROBBERY			
	2007	2006	2005	2004	2007	2006	2005	2004
Abuja Fct	-	15	20	32	60	48	152	181
Abia	50	83	68	145	96	97	906	176
Adamawa	75	85	96	64	89	108	104	84
Akwa Ibom	146	91	65	94	88	51	47	51
Anambra	86	68	56	51	63	65	113	200
Bauchi	72	68	56	51	63	65	113	200
Bayelsa	45	27	31	73	52	51	27	32
Benue	27	26	27	37	27	32	49	48
Borno	106	104	100	92	41	61	657	107
C/River	73	88	62	62	137	134	80	94
Delta	66	80	917	177	120	121	177	216
Ebonyi	48	53	59	53	51	62	30	98
Edo	68	85	86	30	79	163	159	147
Ekiti	32	26	28	23	30	36	49	38
Enugu	23	43	25	62	37	44	53	56
Gombe	18	19	30	31	15	22	51	43
Imo	75	141	102	82	84	172	134	118
Jigawa	18	19	27	15	16	23	7	23
Kadunna	80	78	89	98	40	55	53	63

Kano	41	38	51	55	108	56	81	63
Katsina	31	28	3	38	31	55	67	63
Kebbi	16	39	26	44	19	30	28	47
Kogi	57	32	34	48	41	57	66	36
Kwara	22	20	92	10	16	20	31	23
Lagos	37	80	146	138	70	306	204	141
Niger	46	92	85	74	97	131	141	143
Nasarawa	64	59	58	76	32	43	49	33
Ogun	65	68	67	51	107	166	126	90
Ondo	34	24	44	39	58	70	97	54
Osun	30	24	26	24	51	31	31	31
Oyo	88	71	89	82	224	194	172	1478
Plateau	31	34	30	42	36	43	39	36
Rivers	76	76	74	72	145	138	134	123
Sokoto	29	21	26	31	24	21	23	20
Taraba	38	40	28	39	80	38	30	38
Yobe	40	49	35	70	20	37	38	97
Zamfara	36	19	37	21	32	22	32	33
Railway/Airport	2			11				
TOTAL	1891	2013	2893	2257	2327	2854	4279	4422

Analyzing this data collected from the Nigeria Police Force, Annual Reports 2004-2007, one can see that capital crimes like murder fluctuates while armed robbery is diminishing. Murder and armed robbery recorded a very big number of occurrences, with armed robbery slightly greater than murder with the years under study. Murder at the based year stood at 1,891 as against its prior record of 2,013 while armed robbery was diminishing.

As we can see from the table above, one could see that 2007 recorded lowest for crime rate. If I would proffer a reason for this situation, I would say that the imposition of capital punishment upon certain crimes in Nigeria has no deterrent effect.

So, from the record of capital crimes committed per State in Nigeria for the period of 4 years, one could say that death penalty has failed to deter future occurrence of violent crimes, however, this is not to say that it has no other utilitarian values. A Nigerian criminologist, Professor A.A. Adeyemi also found: "No consistent pattern in the relationship between the average number of executions carried out and the incidence of either murder or armed robbery. In some periods an increase in executions was matched by an increase in crime, in other periods by a decline."⁷⁰ Furthermore, the introduction of the death penalty for armed robbery in 1970 was followed by an increase rather [than] a decrease in armed robberies"⁷¹

From the foregoing, one may try to envisage the likely effect the abolition of death penalty would have on capital offences in Nigeria. This is important, because, all over the globe, various groups dedicated to the task of promoting human rights and preventing the sacredness of human life, have in many countries of the world, constantly agitated for the abolition of the death penalty which, in Nigeria, is the mandatory punishment on conviction of capital offences. Death penalty has been stigmatized as deprecatory and absurd, in that law appears to avenge homicide by itself perpetrating homicide, and that in deterring people from assassination, it is presenting to them the debasing spectacle of an assassination.

According to Signor Zanabelli in his classic work on: Crime and Punishment:

The death penalty imitates in its essence one of the most atrocious crimes with which a man can stain his hands, that of extinguishing the life of a fellow man; and it does so with a cold deliberation which prolongs and enhances the agony of its victim.

The severe criticisms leveled against death penalty have led to a number of countries, including Britain, to abolish death penalty. But it appears that abolition has had little or no salutary effect on the rate of the crimes that hitherto attracted death penalties in those countries. For example, death penalty ceased in Britain about 1965, but murder crimes have not diminished as a result Table B subjoined hereunder, which gives the rate of murder for the period of 1957 to 1968 in the country, will prove the point.

69. AMNESTY INTERNATIONAL, *supra* note 61, at 17.

70. OKAGBUE, *supra* note 60, at 17.

3. Record of Murder Crimes Committed in Britain for the period 1957-1968

TABLE B

	CAPITAL		NON-CAPTIAL				TOTAL
YEAR	NO	%	NO	%	NO	%	REMARKS
1957	12	21.1	45	78.9	57	100	Pre-abolition yr
1958	11	23.4	36	76.6	47	100	“
1959	9	15.8	48	84.2	57	100	“
1960	11	21.6	40	78.4	51	100	“
1961	7	13.2	47	87.0	54	100	“
1962	4	7.1	52	92.9	56	100	“
1963	7	11.9	52	88.1	59	100	“
1964	10	13.2	66	86.8	76	100	“
1964	10	13.2	66	86.8	77	100	“
1965	17	22.1	60	77.9	77	100	Abolished yr.
1966	29	33.0	59	67.0	88	100	Post abolished year. Crime increased from the position in 1965.
1967	24	26.7	66	73	90	100	Crime increased from the position in 1966.
1968	26	27.1	70	72.9	96	100	Crime increased from the position in 1967.

A close study of the above will show that while the rate of murder crimes in Britain was erratic and fluctuated in Britain during the period 1957 to 1964 which fell within the pre-abolition years, it showed a steady increase in the post – abolition years of 1966 to 1968. It is therefore safe to conclude that the abolition of death penalty had no effect on capital crimes in Britain.

From the foregoing, if capital crimes could not be curbed in Britain, which is a developed country with rich social, economic, political and educational background, by the abolition of death penalty, it is difficult to accept that a similar exercise in Nigeria will reduce the rate of such capital offences as murder and armed robbery. While it is conceded that death penalty for the aforesaid offences has not produced enough deterrence or any deterrence at all, in the Nigeria situation the abolition of death punishments does not appear to me to be the problem. I will say that the main issue is addressing the flaws that riddle its implementation.⁷²

II. Death penalty in International Human Rights Law

Nigeria is a party to a number of international human rights treaties, which bind Nigeria to respect and ensure the human rights of all individuals within its territory. Nigeria is a party to the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and People's Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Vienna Convention on the Law of Treaties, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women, and the African Charter on Human and Peoples' Rights, among others. In addition, a number of international instruments such as the Universal Declaration of Human Rights (UDHR) and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Minorities Declaration) are binding as customary international law amongst others.

Previous discussion identified provisions of the Nigerian Constitution that can be said to support abolition of the death penalty, but also acknowledged the constitution's express sanctioning of the death penalty. Even so, Nigerian laws must be in accordance with the provisions of the international human rights law. In the light of the progressive acceptance of human rights, a systematic reading of the existing human rights instruments leads to the conclusion that the death penalty is a violation of human rights.⁷³The use of the death penalty is incompatible with Nigeria's legal obligations under international human rights law and the African Charter for Human and People's Rights.⁷⁴

71. *Id.*

72. John J. Donohue III & Justin Wolfers, *Estimating the Impact of the Death Penalty on Murder* 11 AM. L. & ECON. REV. 249, n. 2, (2009) where their work using existing data, suggests that deterrence has not been shown.

73. B.Slama, "The death penalty as an exception to the right to life: To what extent is capital punishment a violation of human rights?" INT'L Y.B. REGIONAL HUM. RTS. MASTERS' PROGRAMMES 427 (2001).

74. Article 4.

On June 13, 1985, Nigeria ratified the Convention on the Elimination of All Forms of Discrimination against Women. Going by Article 1 of this convention, discrimination against women on grounds of sex has been defined as:

...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

In March 2003, Amnesty International interviewed a number of women in the Katsina prison, Katsina State, and one woman in the Sokoto prison, Sokoto State in northern Nigeria. Most women interviewed were being held on, or had been convicted of culpable homicide for abortion-related offences, all of them carrying the death penalty.⁷⁵

Amnesty International found that of all the cases of women charged with or convicted of offences relating to abortion or *zina* in only two the men who were alleged to be the father were held responsible for either the pregnancy or the alleged abortion and charged or convicted on the same basis as the woman.⁷⁶ These violations amount to discrimination against women as defined by the Convention on the Elimination of All Forms of Discrimination against Women.

In line with the afore-referred ratifications, Amnesty International believes that *zina* as a criminal offence only for Muslims negates the principle of equality before the law and equal protection of the law.⁷⁷ The organization furthermore opposes the criminalization of consensual sexual relations between people over the age of consent. The application of the death penalty for *zina* offences combined with the gender-discriminating rules of evidence within the Shari'a penal codes have meant that women have disproportionately been sentenced to death for *zina* in northern Nigeria since the introduction of new Shari'a penal codes.⁷⁸

75. Amnesty International, Nigeria: The death penalty and women under the Nigeria penal systems, (Aug. 12, 2010, 11:38 AM), *available at* <http://www.amnesty.ca/amnestynews/upload/AFR4400104.pdf>

76. *Id.*

77. *Id.*

78. Death Penalty and Human Rights, AMNESTY INTERNATIONAL- THE DEATH PENALTY IN NIGERIA, (July 16, 2010, 12:57 PM), <http://asiapacific.amnesty.org/library/Index/ENGAFR440172004?open&of=ENG-382>

Amnesty International has raised this concern by campaigning on the cases of Safiya Yakubu Hussaini, Amina Lawal and Fatima Usman. Three out of the cases handled down since 1999 by the Shari'a courts concern women accused of zina. Only two men were sentenced for zina in the same period. Although at present no-one sentenced to death for zina under the new Shari'a penal legislation has yet had their sentence carried out, Amnesty International remains concerned that prescribing the death penalty for the behavior termed as zina is in violation of international law including Article 6 of the ICCPR, to which Nigeria is a state party, and which states "sentence of death may be imposed only for the most serious crimes."⁷⁹

According to Article 14 of the Vienna Convention on the Law of Treaties, once these international treaties have been ratified a state party is bound to carry out its international obligations and may not invoke its domestic law as justification for non-implementation. Thus, the federal government of Nigeria has the ultimate responsibility to ensure that human rights are respected in the territory. As a result, state-declared Shari'a law may not be invoked as a reason for non-implementation of Nigeria's international human rights obligations. The African Charter does not bother to specify exceptions to the right to life but merely emphasizes that no one may be deprived of such right to life...⁸⁰

Nigeria is currently in breach of several international legal standards, including those relating to the avoidance of discrimination against women, the elimination of torture and key fair trial provisions.⁸¹ The new Shari'a Penal Codes allow shari'a courts to impose the death penalty. By this, they violate many international human rights standards ratified by Nigeria, including the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishments (CAT) and The International Covenant on Civil and Political Rights (ICCPR).⁸² By ratifying the Convention Against Torture in June 2001, the Federal Republic of Nigeria agreed not to apply such punishments. The issue of torture is covered by several instruments applicable in Nigeria.⁸³

According to Section 34 (1) of the 1999 Constitution of the Federal Republic of Nigeria, "Every individual is entitled to respect for the dignity of his person, and accordingly (a) no person shall be subject to torture or to inhuman or degrading treatment..." Section 17 (2)(b) further states that, "...human dignity shall be maintained and enhanced." Torture is also prohibited under the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.⁸⁴

79. *Id.*

80. Article 4.

81. European Coalition to Abolish the Death Penalty Team, IMMEDIATE EXECUTION TO AHMADU IBRAHIM AND FATIMA USMAN, NIGERIA, (August 12, 2010, 8:57 AM), <http://www.petitiononline.com/usman/petition.html>

82. *Id.*

83. *Id.*

While Article 4 recognizes the sacredness of human life and the right of everyone to respect for his life and person, Article 5 further provides that "...all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." Nigeria signed the Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment (CAT) on July 28, 1988 and ratified it on June 28, 2001. However, it has still not been turned into domestic law.

Though the Universal Declaration of Human Rights (UDHR) of December 10, 1948 made no mention of the death penalty, it stated in its Article 3 that, "Every person is entitled to life, to freedom and to his own safety." If one looks at the subsequent interpretations of this Article by the UN General Assembly and Economic and Social Council (ECOSOC) resolutions, it shows that the death penalty has been considered to be incompatible with the right to life.⁸⁵ The UDHR guarantees the right of every individual to protection from deprivation of life. It states that no one shall be subjected to cruel or degrading punishment. The death penalty violates both of these fundamental rights and perpetuates a cycle of violence.⁸⁶

United Nations' 'Safeguards guaranteeing the protection of the rights of those facing the death penalty' requires that in countries which maintain the death penalty it should only be used for most serious crimes - offences which are intentional and with lethal or other extremely grave consequences, in accordance with Article 6(2) of the International Covenant on Civil and Political Rights, with a view to abolishing the death penalty.⁸⁷ Nigeria ratified the International Covenant on Civil and Political Rights (ICCPR) in 1993. Yet, the act of consensual extramarital sexual intercourse (*see* the case of Ahmadu Ibrahim and Fatima Usman, *infra*) does not fulfill these conditions.

84. Cap.10, Laws of Federation of Nigeria (1990).

85. Roosevelt, Chairperson of the drafting committee of the UDHR, referred to movement in progress in some states to abolish the death penalty and recommended that it might be better not to make explicit mention of the matter (UN Doc E/CN 4/AC 1/SR/2,10). For more information on this, *see* LILIAN CHINWI, TOWARDS THE ABOLITION OF DEATH PENALTY IN AFRICA 25 (2007).

86. Amnesty International, THE DEATH PENALTY IS A DENIAL OF HUMAN RIGHTS, (Aug. 12, 2010, 12:01 PM), *available at* http://www.opposingviews.com/arguments/the-death-penalty-is-a-denial-of-human-rights#dialogState=argument_state

87. European Coalition *supra* notes 81, at 26.

According to Section 39(1) of the Nigerian Criminal Code Act 1990 and Section 363 of the Nigerian Criminal Procedural Act 1990 the prohibition of the use of the death penalty for persons below 17 years of age, falls short of international standards, Article 37(a) of the Convention on the Rights of the Child (CRC), which sets 18 as the age below which a person should benefit from the special protection of the law and prohibits the death penalty on anyone below 18. Again, the afore-referred Criminal Code section violates Article 12 of the Child and Young Persons Act (of 1958, as adopted in Lagos, Nigeria) which states that, "sentence of death shall not be pronounced or recorded against an offender who had not attained the age of seventeen years at the time the offence was committed, but in lieu thereof the court shall order the offender to be detained during the President's pleasure..."⁸⁸

In spite of this, the death penalty has been used against juvenile offenders in Nigeria. The case of *Mohammed Garuba & Others v. Attorney General of Lagos State & Others* (Suit No.ID/559m/90 High Court of Lagos State, Ikeja Judicial Division) cited in O. Agbakoba and O. Obeagu Handbook on Death Penalty: Towards a Moratorium in Nigeria, 11 (2002) in which the death sentence was passed on 12 children, illustrates this fact.⁸⁹

Several reports accused Nigeria of having used capital punishment against a juvenile offender in the 1990's.⁹⁰ Chiebore Onuoha was reportedly sentenced to death in 1997 for a crime committed when he was 15 years old. Nigeria denied that he had been younger than 18 at the time he committed the offence.⁹¹

In addition, "following a visit by the Nigerian Special Rapporteur on Children to the Nigerian Human Rights Commission to the Ikoyi prison, Lagos state, in March 2003, five cases of juvenile offenders who were detained and charged with capital offences were reported to Amnesty International."⁹²

88. The provisions of Children and Young Persons Act (CYPA) create a danger of abuses expressed by the term '*during the President's pleasure*' that enable the unlimited detention of children.

89. The Child Right's Act 2003, passed into law in the Federal Capital Territory (Abuja), defines a child as a person who has not attained the age of 18 years. However, according to Article 2 of Children and Young Persons Act, enacted in Eastern, Western and Northern regions, a "child" means [a] person under the age of 14 years, while 'young person' means a person who has attained the age of 14 years and is under the age of 17 years." Furthermore, the Immigration Act stipulates that any person below 16 years is a minor, whereas the Matrimonial Causes Act puts the age of maturity at 21 (but it allows persons below this age to be married with the consent of the parents). The latter act becomes irrelevant in practice, since the individual States state their own age for marriage. As for penal responsibility, Article 50 of the Penal Code (north) states: "No act is an offence which is done by a child under seven years of age; or by a child above seven years of age but under 12 years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act."

90. The International Justice Project, JUVENILE ARCHIVES, (Aug. 12, 2010, 10:31 AM) available at <http://www.internationaljusticeproject.org/juveniles.cfm>

Prohibition of the juvenile death penalty has risen to the level of *jus cogens*. The Vienna Convention on the Law of Treaties provides that a norm attain *jus cogens* status when it is:

- 1) Of general international law;
- 2) Accepted by the States as a whole;
- 3) Immune from derogation; and
- 4) Modifiable only by a new norm of the same status.

All of these elements are satisfied with the prohibition against imposing the death penalty on juvenile offenders.⁹³

What is more, international concern over the use of the death penalty in Nigeria has increased remarkably. In 1995 the United Nations (UN), and its individual members, including many African governments, the European Union and the Commonwealth condemned the Nigerian Government for the execution of nine members of the Ogoni ethnic group after a seriously flawed trial.⁹⁴ That case of Ken Saro-Wiwa and nine others (*infra*) was a practical illustration of human rights violation. In that case, the provisional measures of the African Commission were ignored and execution was carried out by the Nigerian government immediately following sentencing. The Commission held that the disregard of provisional measures rendered the execution extrajudicial, therefore arbitrary and a violation of the right to life guaranteed by Article 4 of the Charter.⁹⁵

In partial response to these attacks, in 1996 the Nigerian Government reinstated a number of trial rights for those charged before the Civil Disturbances Special Tribunal, although the new rights still do not fully guarantee fair trial in that tribunal. Official international human rights bodies or their officials also deplored the expansion of the scope of capital crimes in Nigeria.

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91. Amnesty International USA, JUVENILES AND THE DEATH PENALTY - EXECUTIONS WORLDWIDE SINCE 1985, (August 15, 2010, 01:35 PM), *available at* <http://www.amnestyusa.org/document.php?lang=e&id=08DD583894BAB8B78025690000692D25>
See also Amnesty International, UNITED STATES OF AMERICA INDECENT AND INTERNATIONALLY ILLEGAL, THE DEATH PENALTY AGAINST CHILD OFFENDERS, (Aug. 12, 2010, 10:43 AM) *available at* <http://web.amnesty.org/library/Index/engAMR511432002?OpenDocument&of=COUNTRIES%5CUS>
A. *and* Article 5(3) of the African Charter on the Rights and the Welfare of the Child which guarantees the non-application of death penalty for crimes committed by children.
92. *See* Amnesty International, THE DEATH PENALTY AND WOMEN UNDER THE NIGERIA PENAL SYSTEMS, (Aug. 12, 2010, 11:00 AM), *available at* <http://web.amnesty.org/library/print/ENGARF440012004>.
93. Human Rights Advocates, Inc., Report of the Sub-Commission on the Promotion and Protection of Human Rights, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2001.NGO.112.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2001.NGO.112.En?Opendocument), U.N.Doc. E/CN.4/2001/NGO/112 (February 06, 2001).
94. Amnesty International, AFRICA: A NEW FUTURE WITHOUT THE DEATH PENALTY, (July 12, 2010, 5:30 PM), <http://asiapacific.amnesty.org/library/Index/ENGAFR010031997?open&of=ENG-392>
95. This article provides that, "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

In addition, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Bacre Waly Ndiaye, presented his annual report to the UN Commission on Human Rights in 1995, which covered developments in 1994. He noted that in Nigeria, death sentences were imposed after proceedings in which the defendants did not benefit from the rights and guarantees of a fair trial as contained in international instruments.⁹⁶ He also noted that Nigeria had set up special courts with lower standards of due process and respect for the right to life than ordinary criminal courts.⁹⁷

The right to life is fundamental and absolute, and may never be suspended even during states of emergency according to Article 4(2) of the International Covenant on Civil and Political Rights (ICCPR), as ratified by Nigeria on October 29, 1993.⁹⁸ The Shari'a Penal Code permits the death penalty in cases of rape or adultery in which the individual is married. This form of punishment violates Article 6 of the ICCPR, which protects the right to life.

In accordance with the UN Human Rights Committee on interpretation of the ICCPR, the punishment of death by stoning for rape and adultery raises two problems: stoning is an excessive penalty for offenses that do not constitute the "most serious crimes," such as murder, pursuant to ICCPR interpretation, and it is not a method of carrying out the death penalty that causes the least possible physical and mental suffering. Though rape is a serious crime, however, the United States Supreme Court has held in *Furman v. Georgia* that the imposition of death penalty is excessive for the rape of an adult woman.⁹⁹ Furthermore, the Shari'a provision of death by stoning constitutes cruel, inhuman or degrading punishment as prescribed by Article 7 of the ICCPR because it prolongs the physical and mental suffering of the individual.¹⁰⁰

This paper categorically opposes the death penalty in all circumstances on the grounds that it represents the ultimate violation of the right to life guaranteed by international law.

III. "Fatal" Flaws in Administration of the Nigerian Death Penalty

Following nearly 16 years of military rule, a new constitution was adopted in 1999, and a peaceful transition to civilian government was completed. Despite this transition into a democratic government, Nigeria continues to face the daunting task of reforming a petroleum-based economy, whose revenues have been squandered through corruption and mismanagement, and the challenge of institutionalizing democracy.¹⁰¹ In addition, Nigeria continues to experience longstanding ethnic and religious tensions. Although both the 2003 and 2007 presidential elections were marred by significant irregularities and violence, Nigeria is currently experiencing its longest period of civilian rule since independence.¹⁰²

96. Bacre Waly Ndiaye, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.

97. *Id.*

Some spend a decade in jail trapped by poverty, lack of legal representation, paperwork lost in an overstretched bureaucracy, confessions made under torture are freely used without investigation, rights of appeal are denied, inadequately trained judges and judicial officials are appointed, judges are improperly influenced by the political authorities, judicial procedures that fail to meet internationally accepted fair trial standards are used, Nigerian police are corrupt, overstretched and under-resourced, to mention but a few.

A. Conduct of the Police in Crime Investigation and Prosecution

Most criminal prosecutions are conducted by the police. The Director of Public Prosecutions and his department prosecute the more serious cases, such as murder, armed robbery, narcotics, and drug trafficking. However, there are certain persons who can discourage the police or DPP from bringing charges against an offender. For instance, top officials or politicians can order or lobby the police or DPP to drop a case, even when it has already resulted in formal charges before the court.¹⁰³

Of particular interest are the provisions of Section 34(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria. According to that section, "no person shall be subject to torture or to inhuman or degrading treatment." "Under Nigerian law, if a suspect confesses under pressure, threat or torture, it cannot be used as evidence in court. Judges know that there is widespread torture by the police and yet they continue to sentence suspects to death based on these confessions, leading to many possibly innocent people being sentenced to death."¹⁰⁴ Among the list of abuses, Legal Defense and Assistance Project (LEDAP), a Nigerian legal organization that assists prisoners with NGO funding, says it has uncovered confessions obtained under torture. Although such evidence is not admissible in court, Amnesty says the judiciary is turning a blind eye to abuses by police. It says the majority of those on death row were sentenced based on confessions alone.¹⁰⁵

Of the 720 death penalty convictions reviewed in a study by Amnesty International, more than half of the convictions were based on confessions which were often extracted under torture. "Although prohibited in Nigeria, in practice torture by police occurs on a daily basis. Almost 80% of Nigerian prisoners said they had been beaten, threatened with weapons or tortured in police cells, according to the report, which accuses the police of

98. Death Penalty and Human Rights, AMNESTY INTERNATIONAL- THE DEATH PENALTY IN NIGERIA, (July 16, 2010, 12:57 PM),

<http://asiapacific.amnesty.org/library/Index/ENGAFR440172004?open&of=ENG-382>

99. *Furman v. Georgia supra* notes 54, at 16.

100. *Id.*

101. EU Election Observation Mission, Death Penalty flaws, Nigerian Presidential election, EU Election Observation Mission, Nigeria 2007; Final Report: Presidential, National Assembly, Gubernatorial and State House of Assembly Elections, (June 01, 2010, 11:00 AM),

http://ec.europa.eu/external_relations/human_rights/election_observation/nigeria/final_report_en.pdf

102. *Id.*

indiscriminately arresting people - including witnesses - to try and keep up with high crime rates.¹⁰⁶

"The police are overstretched and under-resourced. Because of this, they rely heavily on confessions ... rather than on expensive investigations. Convictions based on such confessions are obviously very unsafe."¹⁰⁷ A report in March 2007 by the UN Special Rapporteur on torture found that prisons often housed populations twice or triple their capacity, with many inmates being held without charge, with insufficient food, water, and medical care, "let alone any opportunities for educational, leisure, or vocational training". The rapporteur, Manfred Nowak, also found 700 prisoners who spent up to 20 years on death row, usually in overcrowded cells.¹⁰⁸ Unfortunately, it is known that the extra-judicial killings and executions by the Police have been used as a way to avoid further investigation into serious crimes.¹⁰⁹

As a career choice, the police man is seen as a misfit, as a complete failure!¹¹⁰ "The Nigerian Police Force is widely regarded as a dumping ground for those who are either not so keen on making an impression on academics, or those whom the promises of the class rooms failed to impress." Hence, a police officer is assumed a failure. His welfare is a fattening ground for politicians and his bosses.¹¹¹ At the slightest opportunity, they exhibit their irresponsibility.

There are instances of police officers having committed crimes against others in the line of duty so serious that the officers themselves receive the death penalty. On April 26, 2010 in Port Harcourt, Nigeria, Justice Boma Diepreyi sentenced police corporal Wafal Aminu and taxi driver Victor Fabiyi to death for killing student Nnamdi Ajikere, 20. The two beat and fatally shot Ajikere after the victim got into an argument over not paying a taxi fare Corporal Aminu is supposed to be a peace keeper in this instance.¹¹²

103. WINSLOW, *supra* note 6, at 5.

104. J.O. Adetunji, Nigerian Death Row Prisoners Forced To Clean Gallows, Says Amnesty, GUARDIAN NEWSPAPER, October 21, 2008, *available at* <http://www.guardian.co.uk/world/2008/oct/21/nigeria-amnesty-prisons>.

105. Cameron Duodu, Nigerian Police Are Breeding Disorder, GUARDIAN NEWSPAPER, March 4, 2010, <http://www.guardian.co.uk/commentisfree/2010/mar/04/nigeria-police-killings-boko-haram>

106. *Id.*

107. Toye Olori, Death penalty-Nigeria: 'Forced confessions' condemn hundreds, AFRICA FILES, November 21, 2008, *available at* <http://www.africafiles.org/article.asp?ID=19497>

108. Manfred Nowak, Nigeria: Tens of thousands languishing in prison awaiting trial, IRIN, August 10, 2010, *available at* <http://www.irinnews.org/Report.aspx?ReportId=73777>

109. Akintokunbo .A. Adejumo, Corruption and the Death Penalty, GHANA RESOURCE CENTER, November 19, 2010, *available at* <http://www.modernghana.com/newsp/250204/1/pagenum1/corruption-and-the-death-penalty-by-akintokunbo-a-.html>

110. Jon Chikadibie Okafo, A Tear for the Nigerian Police Officer, NIGERIAN VILLAGE SQUARE, June 02, 2010, *available at* <http://www.saharareporters.com/article/tear-nigerian-police-officer>

Another illustration can be seen from the February 15, 2010 report of the Compass News, where the Igbosere High Court Justice, Olusola Williams sentenced police inspector Muslim Folorunsho, 60, to death by hanging for murdering Perry Samuel with an AK 47 rifle on or about August 2, 2005. "The laws of our country do not prescribe any other punishment for murder. This court does not have the prerogative of mercy," the Justice said.¹¹³ Recently, on March 19, 2010, Justice James Ogebe of the Nigerian Supreme Court upheld the death sentence passed on police officer Olayemi Oludamilola by Justice J. Ottah of the Kogi State High Court. He was convicted of fatally shooting Solomon Omopariola in 2007 at the police station with a revolver pistol. The sentence was also upheld by the Court of Appeal, Abuja Division.¹¹⁴

"Corruption in the Nigerian police will not stop, criminality in the society will not reduce, justice will remain elusive until police officers stop extorting money from complainants and suspects for arrest, bail and investigation."¹¹⁵

1. People Who Come to Report a Crime

Bodunrin Baruwa was acquitted in 1996 by the Court of Appeal after a total of 16 years in prison. He had been sentenced to death by a High Court for murder, after he reported finding a dead body near his premises to the police. The Court of Appeal regretted that he would "leave custody amazed at the way the law has been used to work such extreme injustice and hardship on him and his family" and that he would go home "broken ... with regret that he played the good citizen to his (own) undoing."¹¹⁶ Some death row prisoners told Amnesty International that they were arrested when they went to a police station to report a crime they had witnessed. Police demanded money for their release.¹¹⁷

2. Torture

According to a 2007 report by the U.N. Special Rapporteur on Torture, Nigerian police routinely torture suspects, shooting them in the legs, driving nails into suspects' hands or heads, tear gas applied to eyes or genitals, clubbing the soles of the feet, burning with cigarettes, hot irons or a flame, sexual torture by rape or violation, psychological manipulation, sleep deprivation, water or food deprivation, shoving pins into the genitals, beating suspects, and hanging them from the ceiling for long periods.¹¹⁸

111. *Id.*

112. Bill Richardson, Conduct of police, HANDS OFF CAIN, (June 03, 2010, 11:23 AM), *available at* <http://www.handsoffcain.info/bancadati/schedastato.php?idstato=13000144&idcontinente=25>

113. *Id.*

114. *Id.*

115. Dr. Amari Omaka, *The Lawyer and His Client: A Critical View On Bail, Corruption and Ethics In Criminal Justice Administration in Sub-Saharan Africa*, 20 (2010), [hereinafter *The Lawyer and His Client*].

116. Amnesty International, *AFRICA: A NEW FUTURE WITHOUT THE DEATH PENALTY*, (July 12, 2010, 5:30 PM), <http://asiapacific.amnesty.org/library/Index/ENGAFR010031997?open&of=ENG-392>

117. *Id.*

Like mentioned earlier, because, of the over-stretched nature of the police force, they rely heavily on confessions and torture to solve crimes. Amnesty International asserts that almost 80 percent of inmates in Nigerian prisons say they have been beaten, threatened with weapons or tortured in police cells.¹¹⁹

The number of people who died as a result of torture in the hands of the Nigerian security forces is in torrents. Five, out of every five persons arrested by the Nigeria Police Force, on suspicion of commission of criminal offenses are tortured. The degree of torture meted to felony suspects are the same degree meted to simple offence and misdemeanor suspects.¹²⁰

3. Bribes

According to the 2000 report of the UN Office on Drugs and Crimes (UNODC) which supports the development and implementation of ethical practices in judicial reform, the Nigerian court's main reason to pay bribes is to expedite the court process.¹²¹ "A lawyer in the desperate bid to get his client off the hook promotes the unethical practice of bribery and corruption."¹²²

It is truly horrifying to think of how many innocent people may have been executed and may still be executed. Many prisoners awaiting trial and on death row told Amnesty International and LEDAP that the police picked them up and asked for money to release them. Those who couldn't pay were treated as suspected armed robbers.¹²³

Bribes for bail were thought to be common place and in some cases, police investigators could be stalled or hijacked.¹²⁴

"Beware of police roadblocks in Nigeria: If you cannot pay a bribe, you can end up dead" according to an Amnesty International report published September 09, 2009. This highlights a new danger in a country where bribe-taking long has been a way for poorly paid government workers to make ends meet.¹²⁵

An incident occurred where a mobile policeman shot dead a taxi driver in Onitsha in south-eastern Anambra State of Nigeria, after arguments over payment of ₦20 (about 6

118. Press Release, Manfred Nowak, Special Rapporteur on Torture Concludes Visit to Nigeria; The Special Rapporteur was invited by the government of Nigeria to undertake a visit to the country from 4 to 10 March 2007, Press Release HR/07/35 (Jun. 25, 2010).

119. TOYE OLORI, *supra* note 107, at 32.

120. Emeka Umeagbalasi, Country's Unlawful Killings - a Challenge for Our Justice System, VANGUARD NEWSPAPER, March 25, 2010, *available at* <http://allafrica.com/stories/201003251219.html>

121. THE LAWYER AND HIS CLIENT, *supra* 115, at 33.

122. *Id.*

123. *Id.*

cents) at a road block. Mr Emeka Chukwuemeka, the Anambra State Police Public Relations Officer (PPRO), who confirmed the incident, said that the policeman would soon be charged to court for murder.¹²⁶

Another incident surfaced on June 03, 2009, about an ongoing arraignment of Lagos investigative reporter, Mr. Steve Ugwu-Chinua against Lagos State Police Commissioner, Mr. Marvelous Akpoyibo. Mr. Akpoyibo is accused of collecting a sum of ₦200,000 (about \$1,500) to drop charges against a notorious ritual killer, Alhaji Rasheed Alayande in the protracted case of murder been levied against Vanguard Newspaper Publisher's wife, Mrs. Oyindamola Amuka.¹²⁷

Also, a Nigerian-American based in United States sent emergency petition to the now late Nigerian President Umaru Yar'Adua and US President Barack Obama after two incidents whereby officers of the Nigerian Police Force, State CID Awka and State Security Services, Anambra demanded bribes in order to properly investigate and properly charge cases involving kidnapping threats among other serious allegations.¹²⁸

4. Extrajudicial Executions

In addition to flaws in application of the death penalty within the Nigerian legal system, a number of people in Nigeria may be subject to “extrajudicial executions,” situations in which police officers carry out their own immediate “sentencing” without trial, prisoners who die from use of excessive force in arrest and interrogation, and other deaths in police custody.

“Police put forth various pretexts to justify extrajudicial executions. When a victim is killed in custody, an attempted escape may be cited. When the victim is killed before being taken into custody, his status as an armed robber may be cited. While armed robbery plagues much of Nigeria, the label of “armed robber” is very often used to justify the jailing or extrajudicial execution of innocent individuals who have come to the attention of the police for reasons ranging from a refusal to pay a bribe to insulting or inconveniencing the police. Extrajudicial executions are also facilitated by the impunity the police force enjoys.”¹²⁹

124. AMNESTY INTERNATIONAL, *supra* note 98, at 31.

125. Michelle Faul, Nigerian Police Killing Civilians: Amnesty International Report, THE HUFFINGTON POST, August 10, 2010, *available at* http://www.huffingtonpost.com/2009/12/09/nigerian-police-killing-c_n_385406.html

126. Afrique Avenir, Extrajudicial Executions, NIGERIAN POLICEMAN SHOOTS DEAD TAXI DRIVER OVER SIX CENTS BRIBE, (June 05, 2010, 03:25 PM) *available at* <http://www.afriqueavenir.org/en/2010/06/24/nigerian-policeman-shoots-dead-taxi-driver-over-6-cents-bribe/>

127. Nigerian News Service, Ritual Murder: Ritualist accuses Police Commissioner of collecting \$1,500 bribe, *available at* <http://www.nigeriannewsservice.com/index.php/Gossip/ritual-murder-ritualist-accuses-police-commissioner-of-collecting-1500-bribe.html>

A typical example is shown where two boys were arrested by police in Nsukka, Enugu state.¹³⁰ They were bundled into the trunk of a car by Police Superintendent Gambo Sarki, and taken to the police station. Their presence was not recorded, they were denied bail, and their parents were told they were not at the station. Their mutilated bodies were subsequently found dumped in a nearby town.¹³¹ Following public protests an inquiry was held which concluded that Sarki had ordered junior officers to shoot the boys. When they refused, he did it himself.¹³² Sarki “escaped” before he could be tried, as a result of which all other prosecutions were suspended. Most of the other accused officers continue to serve and be promoted.¹³³

Another illustration was exposed in Cameroon Duodu’s report on Thursday March 4, 2010 where seventeen Nigerian security officers were arrested in Bauchi, in the northern part of the country, following the exposure of extrajudicial killings caught on video footage obtained by Al-Jazeera and broadcast in February 2010. The footage shows officers killing unarmed men, some of whom were bound and forced to lie face down on the street, before being shot in cold blood.¹³⁴ The extrajudicial killings occurred in the aftermath of clashes between the police and members of the “Boko Haram” Muslim group in July and August 2009. An estimated 1,000 people were killed. Following this incident, several members of the parliament expressed outrage that such killings had become a “daily occurrence” in Nigeria.¹³⁵ The Nigeria Legal Defense and Assistance Project found 2,987 extrajudicial executions by police in 2004, but no force member was convicted.¹³⁶

128. AANW, Extrajudicial Executions, KIDNAPPING IN ANAMBRA STATE: SECURITY AGENTS DEMAND BRIBE IN ORDER TO INVESTIGATE CASES, (July 08, 2010; 06:48 PM), *available at* http://www.elombah.com/index.php?option=com_content&view=article&id=2056:kidnapping-in-anambra-state-security-agents-demand-bribe-in-order-to-investigate-cases&catid=25:politics&Itemid=92

129. PHILIP ALSTON, *supra* note 40, at 14.

130. Nnaemeka Ugwuoke and Izuchukwu Ayogu.

131. In addition to meeting with the fathers of the boys and hearing evidence from their legal representative, the Special Rapporteur was provided with a copy of the official Police Report into the incident entitled, “DETAILED POLICE INVESTIGATION REPORT, RE: CASE OF SUSPECTED MURDER”, signed by the Deputy Commissioner of Police, Enugu State Command, 9 April 2002. The case has also been widely reported on in the press and by civil society. *See e.g.*, CIVIL LIBERTIES ORGANIZATION, I CAN KILL YOU AND NOTHING WILL HAPPEN: A REPORT OF EXTRA-JUDICIAL KILLINGS AND IMPUNITY BY LAW ENFORCEMENT AGENCIES IN NIGERIA 12 (2005); *and* “Nsukka Killings - Recurring Cry for Justice”, VANGUARD NEWSPAPER, August 6, 2003, *and* “JUSTICE DELAYED”, The News, March 22, 2004.

132. The inquiry also indicted a range of other police for complicity in various aspects of the incident. Enugu State Police Command report entitled, “Detailed Police Investigation Report re- case of suspected murder. Complaints: 1 Chief Nicholas Ugwoke. 2 Chief Reuben Ayogu. Suspects: 1 Mr. Gambo Sarki (SP) and others. Deceased: 1 Nnaemeka Ugwoke (m) 2 Izuchukwu Ayogu (m).”

133. *See also*, NSUKKA KILLINGS *supra*.

134. The video, which I must warn is extremely shocking, can be found in this website <http://english.aljazeera.net/news/africa/2010/02/2010298114949112.html>

135. CAMERON DUODU, *supra* note 105, at 32.

136. Dakar, Police kill, rape, torture and extort says rights group, IRIN Africa, August 10, 2010, *available at* <http://www.irinnews.org/report.aspx?ReportId=89220>

B. Inadequate Representation

When we talk about lack of adequate legal representation, we are not necessarily talking about access to counsel, but the quality of representation and trial experience required for death penalty cases. The impact of high caseloads, exceeding 500 cases per year for public defenders, presented the biggest barrier to effective representation. Poor pretrial preparation and trial performance by attorneys, inadequate representation at dispositions and infrequency of appeals taken in cases also constitute problems in representation. The government should evaluate the quality of representation provided to these inmates as deficiencies in access to counsel and quality of representation deny them their right to counsel and effective representation as provided by the Constitution.¹³⁷ There is a lack of meaningful representation at the arrest and detention hearing stage, little pre-trial or trial advocacy, and appellate and post-disposition work are extremely limited or non-existent. At least 80 percent of low-income Nigerians who need civil legal assistance do not receive any, in part because legal aid offices in this country are so stretched that they routinely turn away qualified prospective clients. Many cases are rejected because legal aid programs lack the resources to handle them. This figure does not include the many qualified people who do not ask a legal aid program for help because they do not know the programs exist, they do not know they qualify or they assume that the help is not available to them. Despite the fact that legal aid is an object provided for in the Constitution of the Nigerian Bar Association, the Bar Association can claim little credit for actively encouraging it.¹³⁸

Lack of legal representation, for reasons of cost, ignorance of rights and interference by police, is a major problem in criminal cases. In the Nigerian Institute of Advanced Legal Studies (NIALS) study, 32.6 percent of judicial officers reported that no legal representation was provided for accused persons. Sixty-five percent said they were not represented before their first appearance in court, and 67.6 percent were not represented at trial. According to the study, the reasons for lack of representation include the fact that many Nigerians are not aware of their right to counsel. Interviews with accused persons revealed that 34.5 were unaware of their right to a lawyer. Almost 60 percent said that they were unrepresented because of their inability to afford lawyers' fees.¹³⁹

137. Section 36 (1) of the 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA. In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

138. Jill Cottrell, *The New Nigerian Legal Aid Decree*, 22 J. AFR. L.78, N. 1 (1978). It is not meant to suggest that the Bar Association has paid no attention at all to the matter-the necessity for legal aid was, for example, adverted to by Mr. R. O. A. Akinjide in his Presidential Address to the association at the 1971 Annual Conference.

139. Karen Sorensen, Nigerian, on the eve of "change": transition to what? AFR. WATCH COMMITTEE 22.

An alarming number of suspects are not permitted by police to contact lawyers, or even relatives. Nearly 25 percent said they were not allowed to contact a lawyer, and 31 percent said they were not allowed to contact a family member. Thirty-three percent of lawyers who were contacted said their first contact with a client occurred after the accused person spent time in custody. Nearly 40 percent of lawyers said they encountered difficulties in seeing clients in police custody and 25 percent reported difficulties with prison authorities.¹⁴⁰ The Legal Aid Council which was established in 1976 is woefully underfunded and understaffed. By late 1988, the Legal Aid Council had only 30 salaried lawyers with 815 private lawyers unevenly distributed throughout the country, whose population is estimated at over 156 million.¹⁴¹

Many inmates lack the means to pay bail and often languish in detention centers for extended periods. A practical illustration can be seen from the cases of Kenneth Ekhone and Auwalu Musa who were hanged on May 30, 2006 in Kaduna Central Prison after they had been convicted by a Robbery and Firearms Tribunal. They were denied legal representation and opportunity to appeal against the judgment, even though Musa denied he had nothing to do with the crime.¹⁴² Olawale Fapohunda, a leading human rights lawyer working for an independent organization providing free legal aid, told Fapohunda that Nigeria's death row inmates wanting to appeal were essentially "without legal representation" because of the absence of a fully financed state legal aid scheme.¹⁴³

C. Paperwork Lost on Overstretched Bureaucracy

According to a 2006 report by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, three quarters of those awaiting trial in Nigeria are charged with armed robbery, and a "shocking" 3.7 per cent remain in prison because of lost case files. The rapporteur, Philip Alston, called their conditions "seriously health-threatening."¹⁴⁴ According to Aster van Kregten, Amnesty's researcher in Nigeria, appeals were often abandoned due to lost case files and the country's criminal justice system was "riddled with corruption, negligence and a nearly criminal lack of resources."¹⁴⁵

140. *Id.*

141. *Id.*

142. Amnesty International, Nigeria executions uncovered, (July 07, 2010 2:22 PM), *available at* <http://www.afrol.com/articles/27557>

143. Petar Hadji-Ristic, Poverty and Capital Punishment Go Hand In Hand, *available at* <http://www.ipsnews.net/news.asp?idnews=39683>

144. Dakar, Tens of Thousands Languishing in Prison Awaiting Trial, IRIN AFRICA, August 10, 2010 *available at* <http://www.irinnews.org/Report.aspx?ReportId=73777>

145. J.O. Adetunji, Nigerian Death Row Prisoners Forced to Clean Gallows, says Amnesty, GUARDIAN NEWSPAPER, October 21, 2008, *available at* <http://www.guardian.co.uk/world/2008/oct/21/nigeria-amnesty-prisons>

Mr. Arthur Angel stated that he was in the gallows three times but was saved from the hangman's noose because his name disappeared from the list. He concluded his speech by urging the coalition to join forces to fight for the abolition of capital punishment.¹⁴⁶ Mr. Angel who is now an accomplished artist exhibited his works titled "On the Gallows" and launched his book "I refused to Die" in September 2004.¹⁴⁷

D. Judiciary

The Constitution provides for an independent judiciary; however, in practice the judicial branch remains susceptible to executive and legislative branch pressure, is influenced by political leaders at both the state and federal levels, and suffers from corruption and inefficiency. Judicial corruption is undermining judicial systems in Nigeria, denying citizens' access to justice and the basic human right to a fair and impartial trial, sometimes even to a trial at all. According to Huguette Labelle, Chair man of Transparency International London, "equal treatment before the law is a pillar of democratic societies. When courts are corrupted by greed or political expediency, the scales of justice are tipped, and ordinary people suffer," "Judicial corruption means the voice of the innocent goes unheard, while the guilty act with impunity."¹⁴⁸ Judicial corruptions usually fall into one of two categories: political interference in the judicial process by the legislative or executive branch or bribery. Petty bribery and political influence in the judiciary erode social cohesion: one system for the rich and another for the poor fractures communities. "If money and influence are the basis of justice, the poor cannot compete," said Akere Muna, president of the Pan African Lawyers' Union. "Bribery not only makes justice unaffordable; it ruins the capacity of the justice system to fight against corruption and to serve as a beacon of independence and accountability."¹⁴⁹

Corruption in the judiciary includes any inappropriate influence on the impartiality of judicial proceedings and judgments and can extend to the bribing of judges for favorable decisions, or no decision at all. Judicial corruption includes the misuse of judicial funds and power, such as when a judge hires family members to staff the court, appointment of inadequately trained judges and judicial officials, judges are improperly influenced by the political authorities or manipulation of contracts for court construction and equipment. It can also play out in biased case allocation and in other pre-trial procedures, such as when bribed court clerks "lose" files and evidence, or assign a particular case to a specific judge as chosen by the attorney, or seeking bribes for services that should be free. It can influence any trial or court settlement, and the enforcement of court decisions and sentences.

146. ARTHUR JUDAH ANGEL, *I REFUSED TO DIE*, 277 (2010).

147. Human Rights Law Service, A Report on The Meeting of The Nigerian Coalition on Death Penalty Abolition, (June 06, 2010, 11:28 AM), *available at* http://www.hurilaws.org/Projects/death_penalty_coalition_meeting_report.htm

148. Judicial Corruption, Global Corruption Report, (June 06, 2010, 10:00 AM), http://www.transparency.org/publications/gcr/gcr_2007#8

Judges are always under the pressure to rule in favor of political interests, and for judges who refuse to be compromised, political retaliation can be swift and harsh. Judges considered too independent are transferred to remote locations or even retired untimely.¹⁵⁰

The Nigerian criminal justice system has generally not undergone any reform in more than 40 years.¹⁵¹ At present the police prosecute independently of the Ministry of Justice and the Attorney General's office. The decision to arrest, detain or conduct an investigation is not coordinated with the office of the Attorney General. Even with the participation of donor agencies the justice sector remains grossly underfunded under the national budget, which explains why there is bribery in the system. Amnesty International said the corruption in the criminal justice system meant preferential treatment was given to those who could pay to get on pardon lists.¹⁵² There are no set criteria for the selection of candidates for amnesty in Nigeria; it is fully at the discretion of the Governor or President as the case may be. As a result of this, there is difficulty in checking corruption as it relates to granting of pardon. Thus, in January 3, 2010, Kwara State governor Dr Bukola Saraki pardoned Bayo Ajia and Olayinka Are. They were sentenced to death by the State High Court on charges of culpable homicide in March 2005.¹⁵³

In 2007, Transparency International, the Germany based anti-corruption watch dog rated the Nigerian Judiciary as the number four most corrupt institutions in Nigeria even as police ranked number one. Rational thinkers know that the decisions by some election petition Tribunals and the Appeal Panels to validate some disputed election results since 1999 till date smacks of widespread bribery, corruption and compromise between the Judges and the greedy political power seekers who have effectively captured power.¹⁵⁴ According to Professor Adele Jinadu judges do not mechanically apply the law. In terms of interpretation, other factors influence their judgment. Since 1999, most cases are judged by other conditions being applied. Some other considerations beyond the law influence their decision like undue retirement of judges.

149. Anayochukwu Agbo, How The Judiciary Aids Corruption, TELL MAGAZINE, August 10, 2010, available at http://www.telling.com/contentdisplay.aspx?page_id=10&id=118

150. However since 1999 several states in Northern Nigeria have introduced what has come to be known as the Shari'a law or a reform of their penal code to incorporate certain tenets of the Muslim Shari'a law. The political controversy that has trailed these legislative changes have made very difficult to postulate whether these changes constitute modernization of criminal law or not. Indeed most if not all the laws introduced little or no institutional reform but merely created new offences and punishment such as stoning to death and amputation. The constitutionality of these laws remains an ongoing debate and indeed constitutes a challenge to both unification and reform of the criminal justice system. See CHUDI NELSON OJUKWU & ONIMIM E. BRIGGS, DEVELOPING JUSTICE IN DEVELOPING STATES - THE NIGERIAN EXPERIENCE.

151. J.O. Adetunji, *supra* note 104, at 32.

152. *Id.*

153. Emmanuel Onwubiko, How corrupt is the Nigerian Judiciary? SAHARA REPORTERS, June 30, 2009, available at <http://www.saharareporters.com/articles/external-contrib/3143-how-corrupt-is-the-nigerian-judiciary.html>

He was not alone in his suggestion of corruption because the Chief Justice of Nigeria, Justice Idris Legbo Kutigi expressed worry that corruption has crept into the Nigerian court system. Kutigi who spoke at the inauguration of new Judges of the Federal High Court stated thus: “I advise you to shun corruption and corrupt practices. As you are already aware, the society expects much from the judiciary, as judicial officials, you are to live above board like Caesar’s wife”. Kutigi threatened to henceforth invite the nation’s anti-graft agencies to prosecute any corrupt judges. It is difficult for journalists to expose these incidents of bribery and corruption that go on in the nation’s court system because they take place offshore or rather the bribe givers and takers do their businesses abroad.¹⁵⁵

Again, in 1994, during General Sani Abacha’s regime, a panel of inquiry headed by a renowned retired Supreme Court justice, Kayode Eso, was established to look into the activities of justice administrators. The panel recommended a series of reforms aimed at curbing judicial corruption. The panel also indicted 47 judges for alleged corruption, incompetence, dereliction of duty, lack of productivity or corrupt use of *ex parte* orders. However, the regime never implemented the recommendations of the panel.¹⁵⁶

Unfortunately, we were not always successful in upholding the highest standards of integrity in our judiciary. In recent years, a significant number of judicial officers had to be removed from the bench because they had been found violating the rules and principles enshrined in their code of conduct. Lawyers too have had one sort of discipline or the other due to breaking of rules of ethics and professional conduct.¹⁵⁷

“As of 2002, three judges had been dismissed in Lagos state for corruption and 21 magistrates were laid off in a major reorganization of the magistrates’ courts. The Judicial Service Commission (JSC) also penalized several cases of unethical behavior by magistrates and abuse of judicial power.”¹⁵⁸

154. *Id.*

155. OLUYEMI OSINBANJO, SUB-NATIONAL REFORM EFFORTS: THE LAGOS STATE EXPERIENCE, IN PODER JUDICARIO NA AMERICA LATINA, 148 (2009).

156. HON. JUSTICE TIMOTHY OYEYIPO, JUDICIAL ETHICS TRAINING MANUAL FOR THE NIGERIAN JUDICIARY, 5 (2006).

The court system remains the bastion of democracy and the last hope of the common man. However, the quality, caliber and pedigree of Nigerians appointed as jurists to man the third arm of government particularly the appellate courts, namely, the Court of Appeal and the Supreme Court, have been, and certainly would continue to be, a matter of ceaseless public interests, debates and controversies. There has been an overwhelming pattern in not appointing eminent legal practitioners to these exalted judicial pedestals or offices.¹⁵⁹ By this it is meant that a predetermined and predictable appointment mechanism has been deployed in appointing functionaries of the Court of Appeal and the Supreme Court contrary to comparative and contemporary practices.¹⁶⁰ Out of several eminent persons elevated to the Supreme Court, none originated directly from the bar (inner or outer) nor did any come from the academic circles yet these two components are *sine qua non* in a truly balanced, representative and complete Supreme Court.¹⁶¹

According to Prof. Osinbajo, Lagos State Commissioner for Justice and Attorney General, it was discovered that appointment of men who lack integrity as judges contributes to the potential for corruption on the bench.¹⁶²

1. Corruption

Nigeria has been subject to several influences of power and corruption. From separating from Britain's rule, to military rule, and to the present day democratically elected government. The objectives of the legal system in Nigeria are to settle conflicts among its citizens in a civil manner without having to rely on violence and corruption. It also seeks to protect the rights and freedom of the country's citizens.¹⁶³

Petty bribery and political influence in the judiciary erode social cohesion. Bribery, the other dark thread of judicial corruption, can occur throughout the fabric of the judicial process. As 32 country reports in the Global Corruption Report 2007 demonstrate, judges may accept bribes to delay or accelerate cases, accept or deny appeals, influence other judges or simply to decide a case in a certain way. Court officials may seek bribes for services that should be free; lawyers may charge additional "fees" to expedite or delay cases, or to direct clients to judges known to take bribes.¹⁶⁴

157. THE LAWYER AND HIS CLIENT, *supra* note 115, at 32.

158. Nurudeen A. Ogbara, A Clarion Call For Appointment of Seasoned Legal Practitioners and Distinguished Professors to the Supreme Court and Court of Appeal (2002-2008) (on file with Nigerian Law Registry).

159. *Id.*

160. *Id.*

161. OLUYEMI OSINBAJO, SUB-NATIONAL REFORM EFFORTS: THE LAGOS STATE EXPERIENCES, (2006).

162. *See generally* A.O. OBILADE, THE NIGERIAN LEGAL SYSTEM (1979).

163. Transparency International, Corruption, GLOBAL CORRUPTION REPORT 2007, (June 06, 2010, 10:00 AM), http://www.transparency.org/publications/gcr/gcr_2007#8

Dr. Amari Omaka in his paper presented at the 4th International Legal Ethics Conference held at Standard Law School California (USA) on July 15-17, 2010, stated that “judges were chosen for their partisan connections or ‘flexibility,’ rather than on merit, and therefore they started their careers with little reason to suspect that honest and ethical conduct mattered in furthering their careers.”¹⁶⁵

The United Nations has labeled the Nigeria Police Force (NPF) as one of the most corrupt public institution in Nigeria. On July 01, 2010, officials of the agency in Abuja disclosed that crime and corruption represents over seventy-five percent of obstacles to the setting up of businesses in the country. In the recent past, nationwide corruption survey identified the Nigerian Police as the most corrupt organization in the country. The survey results, which echoed a previous corruption finding in previous years, were released by the Independent Advocacy Project (IAP), a non-governmental organization which focuses on good governance in Nigeria.¹⁶⁶

2. Lack of Independence

The process and mechanisms followed in Nigeria in the appointment and removal of judges is discriminatory and highly political. A typical example can be seen from the case study concerning the Appointment of the Chief Judge of Kano State. In that illustration, the serving CJ gives notice of retirement paving way for an Acting CJ to be appointed. Kano State Judicial Service Commission (KSJC) is prompted to recommend a replacement, initiates the process and forwards nominees to the National Judicial Council (NJC). NJC screens nominees and forwards its recommendation to the Governor who, in turn, submits it to the Kano State House of Assembly (KSHA) for confirmation. The KSHA sits on the matter. The KSJC followed convention by recommending to NJC the most senior Judge who is an indigene of the State along with three others - all three were ranked in order of priority the Acting CJ, the most senior judge, was not one of the three considered by the KSJC apparently because he was not from Kano State. The Governor, reportedly, had preference for a candidate for the post although not the one ranked first or even second by the KSJC. A dominant political force in the State similarly favored another candidate of three screened by the KSJC although not ranked first. The local Bar Association steps into the fray. One interest group files a suit seeking the issuance of a writ of mandamus to compel the government to appoint a CJ for the State as the incumbent Acting CJ had stayed beyond the period allowed by the constitution. In the meantime neither the KSJC nor the NJC could do anything to either accelerate the process or initiate new process for the appointment as they had neither received a rejection notice nor a confirmation of any of the three nominees. Finally, the Governor caves in. He appointed the top- ranked candidate - one who enjoyed the blessings of both the KSJC and NJC and the support of conventional wisdom.¹⁶⁷ The Constitutional provisions did not leave much choice either. According to the provisions of Section 271 of the 1999 Constitution of the Federal Republic of Nigeria,

“(1) The appointment of a person to the office of Chief Judge of a State shall be made by the Governor of the State on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the State.

(2) The appointment of a person to the office of a Judge of a High Court of a State shall be made by the Governor of the State acting on the recommendation of the National Judicial Council.

(3) A person shall not be qualified to hold office of a Judge of a High Court of a State unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years.

(4) If the office of Chief Judge of a State is vacant or if the person holding the office is for any person unable to perform the functions of the office, then until a person has been appointed to and has assumed the functions of that office, or until the person holding the office has resumed those functions, the Governor of the State shall appoint the most senior Judge of the High Court to perform those functions.

(5) Except on the recommendation of the National Judicial Council an appointment pursuant to subsection (4) of this section shall cease to have effect after expiration of three months from the date of such appointment and the Governor shall not re-appoint a person whose appointment has lapsed.”

164. THE LAWYER AND HIS CLIENT, *supra* note 157, at 42.

165. NigeriaFilms, Corruption, UNO SURVEY INDICTS POLICE, PHCN AS MOST CORRUPT NIGERIA PUBLIC INSTITUTIONS, (July 07, 2010, 4:26 PM), *available at* <http://www.nigeriafilms.com/news/8149/14/uno-survey-indicts-police-phcn-as-most-corrupt-nig.html>

166. Professor A. H. Yadudu, Appointment & Removal of Judges in Nigeria: Conventional Wisdom Confronts Dynamics of Transition (2003).

Appointments are now based on ethnicity, family, other connections or lobbying. The policy of inviting deserving candidates to be appointed to the Bench is no longer in existence. Judicial position has turned into an inheritance or a patrimony or even birthright.¹⁶⁸ The Nigerian Bar Association (NBA) in a communique at the end of its National Executive Committee meeting in Port-Harcourt, Rivers State, frowns at what appears to be the growing trend of hereditary succession in the appointments to the Bench wherein children and relations of serving Justices are given preferential treatment in the appointments of judicial personnel.¹⁶⁹ The issue of Federal Character in the appointments being made by former President Umaru Musa Yar'Adua is again causing ripples in the South-east, as the federal lawmakers representing the zone on June 8, 2009 raised objections on the recent nomination of judges from different parts of the country preparatory to their elevation as justices of the Court of Appeal. The legislators, under the aegis of the "South-east Caucus", are protesting the exclusion of judges from the zone among those slated for elevation.¹⁷⁰

3. Use for Political Ends

“In Nigeria, half the judges agreed that the government controlled the judiciary and more than half the lawyers regarded courts’ decisions as influenced by politics.”¹⁷¹

On November 10, 1995, Ken Saro-Wiwa, President of the Movement for the Survival of Ogoni People (MOSOP), and eight others were executed in Nigeria following convictions by a Civil Disturbances Special Tribunal for the murder of four rival Ogoni leaders.¹⁷² A day after the murders, Lt. Colonel Dauda Komo, the Rivers State Military Administrator, had publicly accused the MOSOP leadership of the murders. MOSOP had been campaigning against the operations of a multinational oil company, Shell, which led to the suspension by Shell of oil drilling operations in Ogoni land. Unofficially accused of planning an independent "Ogoni State", Ken Saro-Wiwa had been detained as a prisoner of conscience on several occasions. All nine Ogoni men were ill-treated and some were severely tortured during nine months’ pre-trial detention in military and police custody.¹⁷³

167. Innocent Anaba, NBA Condemns Favouritism in Appointment of Judges, VANGUARD NEWSPAPER, July 18, 2009, available at <http://allafrica.com/stories/200907200252.html>

168. *Id.*

169. Onwuka Nzeshi, South East Lawmakers Protest over Appointment of Judges, THISDAY NEWSPAPER, June 08, 2009, available at <http://allafrica.com/stories/200906081246.html>

170. THE LAWYER AND HIS CLIENT, *supra* note 164, at 44.

171. University of Pennsylvania, Nigeria: Death Sentence for Activists, (August 02, 2010, 11:00 AM) available at http://www.africa.upenn.edu/Urgent_Action/apic_110195.html

172. In recent years many leading political figures have been assassinated. One list provided to Philip Alston of UN Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions identified 48 “high profile attacks, murders and assassinations” between Sept 1999 and March 2004. *See generally* Civil Liberties Organisation, Clear and Present Danger: The State of Human Rights and Governance, Year 2004 (2005). One example was Chief Lamidi Adedibu, a prominent politician in Ibadan, the Oyo State capital, who was shot dead in his car on July 16, 2005. The assailants escaped and the news was reported on The Punch Newspaper on July 18, 2005 as “Suspected assassins kill Adedibu’s associate”.

It has been claimed that the trials were grossly unfair and were influenced by the government.¹⁷⁴ Also, decrees issued by the government ensured that the tribunal's proceedings could not be reviewed by a higher court.¹⁷⁵ Michael Birnbaum, a British lawyer who witnessed the trials, wrote that: "The judgment of the Tribunal is not merely wrong, illogical or perverse. It is downright dishonest. The Tribunal consistently advanced arguments which no experienced lawyer could possibly believe to be logical or just. The only explanation is that the Tribunal first decided on its verdicts and then sought for arguments to justify them. No barrel was too deep to be scraped."¹⁷⁶

Although the convicted prisoners were entitled to ask for a commutation of sentence, they were executed within the prescribed time when this could have occurred. The Human Rights Committee established under the ICCPR considered the executions to be "extrajudicial". There are allegations that many executions take place after trials which are no more than a sham.¹⁷⁷ In mid 1995, 43 people were convicted of treason-related offences in Nigeria. The charges related to an alleged coup plot which appeared to have been fabricated as a pretext to execute or imprison key government critics, including the former head of state, Olusegun Obasanjo.¹⁷⁸

The suspects were charged before a Special Military Tribunal headed by a member of the military government. They were tried in camera, without legal representation of their choice.¹⁷⁹ They were reportedly assigned military lawyers but Olusegun Obasanjo was said to have rejected a military lawyer after his request to be defended by his attorney was turned down.¹⁸⁰ There were reported to be difficulties finding a military lawyer willing to defend one of the convicts. Statements reportedly made under torture were admitted in evidence without question. 14 of the 43 were initially sentenced to death, although their sentences were later commuted to long terms of imprisonment after intense local and international pressure.¹⁸¹ One of those sentenced to death was Musa Yar' Adua, a retired military general who then became a politician and campaigned against the prolongation of the military government's rule. Among those convicted of being accessories after the fact of treason were Dr Beko Ransome-Kuti, leader of an opposition pro-democracy coalition, Shehu Sani, his deputy, and four journalists working for Independent News Media.¹⁸² They are considered by Amnesty International to be prisoners of conscience.¹⁸³

173. Amnesty International, *Use for Political Ends, A TRAVESTY OF JUSTICE SECRET TREASON TRIALS AND OTHER CONCERNS*, (JULY 16, 2010, 3:13 PM), *available at*

<http://asiapacific.amnesty.org/library/Index/ENGAFR440231995?open&of=ENG-2AF>

174. *Id.*

175. Amnesty International USA, "Africa: A New Future without the Death Penalty," (Aug. 10, 2010, 2:08 PM), *available at*

<http://www.amnestyusa.org/document.php?lang=e&id=5174BE1C4652D122802569000069316C>

E. Process

“Of approximately 44,000 prisoners in Nigeria, some 25,000, or well over 50 per cent, have yet to face trial.¹⁸⁴ About 75 per cent of the latter have been charged with armed robbery, which is a capital offence. Three-quarters of those were not able to get legal assistance from the Legal Aid Council and a shocking 3.7 per cent remain in prison because of lost case files. Many of the 25,000 with whom the Special Rapporteur spoke are held in seriously health-threatening conditions, some for periods of 10-14 years.”¹⁸⁵

Amnesty International said that the criminal justice system is utterly failing the Nigerian people, calling it a "conveyor belt of injustice, from beginning to end." According to Amnesty, 65 percent of prison inmates in Nigeria have never been convicted of any crime, they await trial for years.¹⁸⁶

Addressing the administrative processes as it relates to this paper, the adage “justice delayed is justice denied” will apply. Dr. Omari demonstrated in his paper, the lawyer and his client, that access to justice was a major problem, in that access to information, data collection and analysis was often more problematic than physical or economic access to courts.¹⁸⁷ Rectifying this problem has proved to be a challenge over the years. According to The Lagos Ministry of Justice User Perception Survey conducted in 2000, 40 percent of lawyers surveyed would not report judicial corruption because they felt that nothing would be done about it, and 53 percent of lawyers would not report same for fear of being victimized.¹⁸⁸

The Ministry of justice or the office of the Attorney General is constitutionally empowered to advise on prosecution; to prosecute or to enter a *nolle prosequi* (i.e., discontinue prosecution). However, critics allege that their delay in giving of advice or their giving of wrong advice is as a result of corruption.¹⁸⁹

176. *Id.* at 174.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. Onyebuchi Ezigbo, “25,000 Inmates Awaiting Trial”, THISDAY NEWSPAPER, Sept. 02, 2005, *available at* <http://allafrica.com/stories/200509050323.html>

185. PHILIP ALSTON, *supra* note 129, at 36.

186. Press Release, Amnesty International USA, 65 Percent of Prison Inmates Have Never Been Convicted of a Crime; Some Awaiting Trial for a Decade, (Feb. 25, 2008), *available at* <http://www.amnestyusa.org/document.php?lang=e&id=ENGUSA20080225001>

187. THE LAWYER AND HIS CLIENT, *supra* note 157, at 42.

188. LAGOS STATE MINISTRY OF ADMINISTRATION OF JUSTICE IN THE 21ST CENTURY, LAGOS, October 16, 2000.

189. THE LAWYER AND HIS CLIENT, *supra* note 187.

1. Not Having Appeal Time Run

Appeals in some cases have been pending for over 14 years. Below is a recount of Budman Oraekwu, a former death row prisoner who is now a singer.

“After spending 16 years in there my appeal has not come up in the court”

Date of arrest: August 3, 1982

Sentenced to death: December 8, 1988

Appeal: pending

Date of release: April 4, 2004

Age at time of arrest: 15

Years on death row: 16 years

Years in prison: almost 22 years

“I was 15 years when I was arrested for a crime committed by my senior brother. My brother made me go through a lot. He escaped custody. So the police said, while your brother escaped, you be here for him. After six years my case was tried. I was given a legal aid counsel. I could not see the support she gave me; every argument was alright. She did not support me. In court, they said I collaborated with my brother. I said no. They said I should keep quiet. My brother gave a written statement that I was innocent, but the prosecution said it was no evidence since he was not there. So the judge said, because this man is no more here, his evidence is no evidence. I had to bear the cost. When he was giving his judgment the judge tried to disbelieve everything of my evidence. Finally, he said you are sentenced to death, may your soul rest in peace. It was like something went out of me. I said what, is this man a human being at all? What am I going to ask this man, to have mercy on me? For what? I did not do anything wrong. My counsel stood up and said, ‘Please consider his age, he was 15 years. Temper justice with mercy.’ I immediately filed an appeal. After spending 16 years in there my appeal has not come up in the court. I was still waiting. Enugu prison is bad, completely bad. Nothing good comes out of there. Many innocent people died there. About 15 times I shared my will. ‘Take this, take this; I am sure I am going’. One in the death row dies daily. Once you live till 2:00 p.m. in the afternoon, and the execution did not come, you can begin to celebrate your day. On death row I became a singer. The inspiration came to me out of pains, when I was bitter, when I had no person to consult my things. After many years of doing nothing, waiting for the hangman, living in fear, I began to make some music for myself. In 2004, April, finally I got my release.”¹⁹⁰

What of the case of *Nasiru Bello v. A.G of Oyo State*? In that case, Nasiru Bello's appeal against his conviction for armed robbery was pending at the Supreme Court when the Oyo State Military Governor signed the death warrant pursuant to which he was executed. As it turned out, Bello was found innocent on appeal after he was executed.¹⁹¹

At this juncture, it is pertinent to refer back to the politicization and sentence to death of Ken Saro-Wiwa and eight Ogoni leaders formally mentioned under the use of death penalty for political ends.¹⁹² At the time Saro-Wiwa and the others were hurriedly executed, the appeal filed by late Gani Fawehinmi (a human rights activist) on their behalf was still pending at the Court of Appeal.¹⁹³

F. Lack of Uniformity in the Law

In the Nigerian legal system, both the federal government and the individual states have the power to pass statutes or laws. Both are subject to constitutional limitations. Some topics are largely covered by federal legislation, some are handled almost exclusively by the states (like the implementation of Shari'a by the northern states, or the imposition of the death penalty for kidnapping in the eastern states) and many are the subject of both state and federal law. However, a crime as fundamental as the death penalty should be administered solely by the federal government. There is need for greater uniformity of law on particular subjects.¹⁹⁴

G. Cruel and Inhumane Treatment in Administration

Malam Buba Bello Jangebe was the first person to have had his right wrist amputated for theft on the orders of a Shari'a court in Zamfara State, a year after 12 northern Nigerian states adopted the strict Islamic penal code. Zamfara state in the predominantly Muslim north of Nigeria pioneered the move after the country returned to civilian rule following 15 years of military dictatorship.

Another illustration of the cruel and inhumane nature by which some of these crimes are treated is the sentencing under Shari'a law in Nigeria's northern state of Katsina in 2002 of a 31-year-old woman, Amina Lawal, to be stoned to death for adultery highlighted the rising religious conflict and violence that has occurred since the resumption of civilian democratic governance in 1999.¹⁹⁵

190. AMNESTY INTERNATIONAL, *supra* note 116, at 33.

191. Nasiru Bello v. A.G of Oyo State (1985) 1 NWLR 828(Nigeria).

192. For more information on Saro-wiwa and the Ogoni group, see Anthony Daniels, The Perils of Activism: Ken Saro-Wiwa, THE NEW CRITERION, Jan. 2000, available at <http://www.newcriterion.com/articles.cfm/The-perils-of-activism--Ken-Saro-Wiwa-2733>

193. J.A. McIntyre, *The Writer as Agitator: Ken Saro-Wiwa*, 31, AFR. SPECTRUM, 295, NO.3 (1996)

194. Chinwe C. Onuoha, Death Penalty: A Case for its Abolition in the Nigerian Legal System, (Aug. 15, 2005) (unpublished LLB dissertation, Madonna University Okija, Nigeria) (on file with Law Library, Madonna University Okija, Nigeria).

195. J. ISAWA ELAIGWU AND HABU GALADIMA, THE SHADOW OF SHARI'A OVER NIGERIAN FEDERALISM, 123, (2003).

Some critics have said that free speech is not compatible with Shari'a Law, the laws of society in an Islamic State. The Nigerian Government is banning internet discussion of the topic, even among non-Moslems. The Magajin Gari Sharia court in the northern city of Kaduna on Monday, March 22, 2010 ordered the Civil Rights Congress (CRC), one of the country's leading rights groups, to suspend its Twitter and Facebook online debates on the amputation, which was carried out in 2000.¹⁹⁶ The court granted an interim injunction "restraining the respondents either by themselves or their agents... from opening a chat forum on Facebook, Twitter, or any blog for the purpose of the debate on the amputation of Mallam Buba Bello Jangebe," said the order. The order followed a suit filed on March 19, 2010 by the Association of Muslim Brotherhood of Nigeria, a pro-Shari'a group based in the northern political capital of Kaduna, which argued that Internet forums would be used as "a mockery of the Shari'a system as negative issues will be discussed."¹⁹⁷

Another instance is that of Bariya Magazu. Defying pressure from international and domestic groups, Nigerian authorities have flogged a 17-year-old Muslim girl 100 times for having premarital sex. The case has created a furor in Nigeria, where a move to adopt Shari'a, or Islamic law, has swept the Muslim north. Human rights groups demanded that the sentence be rescinded or at least delayed until the girl, Magazu, had stopped breast-feeding her baby, out of fear that the girl would be seriously injured or die.¹⁹⁸

Government spokesman Bashir Sanda said local authorities wanted to bring an early end to a storm of international controversy created by the court's guilty verdict and sentence in September. The flogging had been delayed to allow Magazu to give birth to her child, which was born Dec. 4. "The governor felt he ought to act immediately to put the matter to rest," Bashir said. As she braced herself for the flogging, Magazu crouched barefoot on the dirt floor of her father's house in northern Nigeria, cradling her crying child. Hiding her face in a long shawl and speaking in barely audible monosyllables, she said she accepted the decision of the local Islamic court, but she admitted that she was afraid of being caned. Magazu had no lawyer when she appeared with her family in the cramped Shari'a courthouse outside her village. Since she was unmarried, Magazu's pregnancy immediately proved that the teenager had broken the strict Muslim legal code known as Shari'a. She named three village men as her lovers and said one was the father of her child; later she said her father had pressured her to have sex with the men. All three men held the Qura'n that hangs in a ceremonial bag on the peeling wall of the courtroom and swore that they were innocent.¹⁹⁹

196. Imam Imam, Shari'a Judge Bans Amputation Discussion on Facebook, Twitter, THISDAY NEWSPAPER, March 24, 2010, *available at* <http://allafrica.com/stories/201003240460.html>

197. *Id.*

198. Ivan Watson, Cruel Punishment, NIGERIAN GIRL FLOGGED FOR PREMARITAL SEX, (July 28, 2010, 9:13 PM) *available at* <http://www.mindfully.org/Reform/Nigerian-Girl-Flogged.htm>

199. *Id.*

They were freed, but Judge Idris Usman Gusau sentenced Magazu to 100 lashes and doled out an additional sentence of 80 lashes for what he called Magazu's "false accusations" against the three men. Later, Mohammed Tukur Anka, the chief judicial registrar of Zamfara state, conceded that somewhere in Magazu's rural village, a man who was guilty of adultery and is the father of Magazu's child is walking free. He said no investigation was under way. And the preceding week, he dropped the 80 lashes he had imposed for false charges.²⁰⁰

Despite the protections in the international human rights treaties to which Nigeria is a party, there are a number of documented cases by Amnesty International where Shari'a courts have ordered amputations for theft and robbery, and have ordered public floggings for smoking marijuana, gambling, and carrying women on the back of motto-taxis. In one case, Ahmed Tijjani, who was found guilty of partially blinding a friend during an argument, was sentenced by a Shari'a court in Katsina to have his left eye removed. The UN Special Rapporteur on Torture has stated that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment prohibited in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Nigeria has been a party since June 2001.

1. The Way Death Penalty is Carried Out

On August 02, 1994, 38 people were executed by firing-squad in Enugu, south-eastern Nigeria. One of them, Simeon Agbo, apparently survived, stood up an hour later, bleeding profusely, to protest his innocence and plead for water. Police reportedly threw him onto a lorry load of corpses and his subsequent fate was unknown.²⁰¹

In some cases, the violence used during executions has unintended consequences for other people. In 1995, a prison driver was reportedly killed by a stray bullet during a public execution in Warri, Nigeria. Trials leading to the death penalty are often deeply flawed. In many African countries fair trial procedures either do not exist or are not observed. Confessions made under torture are freely used without investigation. Rights of appeal are denied. Inadequately trained judges and judicial officials are appointed. Judges are improperly influenced by the political authorities. Many other shortcomings often characterize tribunals exercising jurisdiction to impose the death penalty. By using judicial procedures that fail to meet internationally accepted fair trial standards, the Nigerian government attempt to legitimize their elimination or repression of political opposition.²⁰²

200. *Id.*

201. AMNESTY INTERNATIONAL, *supra* note 173, at 46.

202. *Id.*

2. Stoning

According to Amnesty International, Safiya Huseini was sentenced to death by stoning for allegedly committing adultery. She was finally acquitted on procedural grounds. An impoverished mother of five from the remote Tungar Tudu village in northern Nigeria, Huseini has been at the center of an international uproar since a lower Islamic court found her guilty of adultery and under Shari'a, or Islamic law, sentenced her to be stoned to death while buried up to her waist in sand.²⁰³

In another instance, an Islamic Appeal Court has upheld a sentence of death by stoning for adultery against a Nigerian woman, Amina Lawal, 30, who was found guilty by a court in Katsina state in March 2002 after bearing a child outside marriage.²⁰⁴ Amina was a single mother who was sentenced to death by a lower Islamic court for having a baby 10 months after she was divorced.

A couple, Ahmadu Ibrahim and Fatima Usman, both 30, was sentenced to death in May 2002 by a court in the central town of New Gawu. Fatima Usman had become pregnant with Ibrahim's child while she was married to another man. Ibrahim and Usman had originally been sentenced to five years in prison in May after pleading guilty to adultery but protested to a higher court that the sentence was too harsh. Their appeal backfired May when the court ruled instead that their sentence was too lenient. The state's Shari'a laws prescribe death as punishment for adultery. The two were not present at their sentencing because they were not allowed to leave jail. Ibrahim is the first man to be sentenced to death for adultery in Nigeria. Previously only women were prosecuted and their children used as evidence while men got off because of a lack of proof.²⁰⁵

Another man who allegedly confessed to raping a nine-year-old girl in northern Jigawa state was sentenced to death by stoning in 2002. The Jigawa government said 50-year-old Mohammed Ado Baranda could be executed at "anytime" now that the time for him to appeal has expired.

On September 23, 2003, Jibrin Babaji, a man in his early twenties was found guilty of sodomy with three children under the age of eighteen and sentenced to death by stoning by Shari'a Court I, Kobi, Bauchi State. Jibrin Babaji confessed to the offense and the judge sentenced him to death. He also sentenced the children who had allegedly accepted money from Babaji in return for sex to six strokes of the cane.²⁰⁶

Mohammed Ado Baranda was sentenced to death under Shari'a law in May 2002 after he was convicted of raping a nine-year-old girl. He failed to challenge the sentence by the time the 30-day mandatory appeal period passed.²⁰⁷

203. Leela Jacinto, Nigerian Woman Avoids Stoning Death, ABC NEWS/INTERNATIONAL, March 25, available at

<http://abcnews.go.com/International/story?id=80054&page=1>

204. Dan Isaacs, Nigeria's Stoning Appeal Fails, (August 07, 2010, 11:55 AM), available at <http://news.bbc.co.uk/2/hi/africa/2202111.stm>

In Kebbi state, Attahiru Umaru was accused of sexually abusing a seven-year-old boy, and was sentenced to death by stoning after he confessed to the crime. He did not have legal representation during the trial.²⁰⁸

Again, another man, Yunusa Chiyawa, was sentenced to death by stoning in Bauchi State in June 2002 for eloping and having sex with the wife of a friend. The woman was acquitted after the presiding judge accepted her claims that Chiyawa had cast a spell on her.²⁰⁹

At this juncture, it is pertinent to mention the case of Umar Tori, who was found guilty of incest with his stepdaughter, aged about fifteen, and was sentenced to death by stoning on December 29, 2003, in Bauchi State. His stepdaughter, who claimed she had been raped, was sentenced to one hundred lashes for pre-marital sex. They did not have any legal representation during their trial.²¹⁰

The only death sentence carried out under Shari'a law so far was the hanging in Katsina State in January 2002 of a man, Sani Rodi, who was convicted of killing a woman and her two children.²¹¹ His execution was authorized by the governor of Katsina State, and he was executed by hanging on January 3, 2002. Even though he was tried in Katsina State, he was hanged in neighboring Kaduna State prison, as this is the only center equipped to carry out executions in northern Nigeria.²¹²

H. Gender Discrimination

At least 11 death sentences have been handed down since 1999 by Shari'a courts in the States of Bauchi, Jigawa, Katsina, Niger and Sokoto and in most of these the convicted are women. Three of these cases concern women accused of zina. Only two men were sentenced for zina in the same period. As of May 2004, three people have lodged appeals against their death sentences and are awaiting dates for a hearing. Two of the women, Safiya Yakubu Hussaini and Amina Lawal, have had their convictions and sentences for zina quashed on appeal. The most recent woman convicted of zina is Fatima Usman who received her death sentence in May 2002 by the Shari'a court of Gawu-Babangida, Niger State. The definition of zina de facto recognizes that men have in certain cases, namely marriage, sexual rights over women. This in itself is a violation of the principle of equality between the sexes and results in women in reality having less control over their sex life than men.²¹³

205. Amnesty International Norway, Gender Discrimination, AHMADU IBRAHIM AND FATIMA USMAN SENTENCED TO DEATH BY STONING IN NIGERIA FOR HAVING AN AFFAIR! (July 27, 2010, 4:12 PM), available at <http://www.ccadp.org/ahmaduibrahim-fatimausman.htm>

206. "Political Shari'a"? *Human Rights and Islamic Law in Northern Nigeria*, 16, HUM. RTS. WATCH, 15, NO. 9, (2004).

207. IRIN Africa, Gender Discrimination, LATE APPEAL AGAINST STONING SENTENCE, (August 10, 2010, 12:02 PM), available at <http://www.irinnews.org/report.aspx?reportid=34111>

At this juncture, it is pertinent to mention the Amnesty International Report on "Nigeria: Rape- the Silent Killer" by police and security forces in Nigeria. It stated that rape of women and girls by both the police and security forces within their homes and community is endemic in Nigeria as is the abject failure of the Nigerian authorities to bring perpetrators to justice.²¹⁴ In the report, Amnesty International found out that the Nigerian Police and security forces commit rape in many different circumstances, both on and off duty. "Rape is at times used strategically to coerce and intimidate entire communities", it said.²¹⁵

"Sex workers report being rounded up by Nigerian police force personnel for the express purpose of rape. Acknowledging the routine nature of rape by police, one police officer referred to it simply as a 'fringe benefit' of certain patrols."²¹⁶ Officers also used nightly

208. *Id.* at 206.

209. IRIN Africa, Stoning, NIGERIA: LATE APPEAL AGAINST STONING SENTENCE, Aug. 10, 2010, *available at* <http://www.irinnews.org/report.aspx?reportid=34111>

210. *Id.*

211. *Id.*

212. *Id.* at 206.

213. Amnesty International, THE DEATH PENALTY IN NIGERIA, (June 16, 2010, 5:00 PM), *available at* <http://asiapacific.amnesty.org/library/Index/ENGAFR440172004?open&of=ENG-382>

214. The Nigerian Criminal code describes rape in Section 357 of the Criminal Code Act (Nigerian Laws Cap 38), applicable in the south of Nigeria, as: "Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent. If the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act. Or in the case of a married woman, by personating her husband, is guilty of an offence, which is called rape. Under Section 358, rape is punishable by life imprisonment, with the possible addition of caning".

While the Penal Code (Nigerian Laws Cap 89), applicable in the north of Nigeria, defines rape as, "a man is said to commit rape who, save in the case referred to in subsection (2), has sexual intercourse with a woman in any of the following circumstances - against her will; without her consent; with her consent, when her consent has been obtained by putting her in fear of death or hurt; with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married and with or without her consent, when she is under fourteen years of age or of unsound mind."

215. Hilda Okoisor, Nigeria: Rape by police/security forces endemic, *available at* <http://www.stopdemand.org/afawcs0112878/ID=186/newsdetails.html>

216. David Smith, Nigerian police kill and torture suspects, claims report, *available at* <http://www.guardian.co.uk/world/2010/may/17/nigeria-police-killing-torture-report>

217. Jon Gambrell, Nigeria Police Brutality: Cops Kill & Torture Victims' Genitals, Group Claims, *available at* http://www.huffingtonpost.com/2010/05/17/nigeria-police-brutality-_n_579486.html

218. *Id.*

219. ZIBA MIR HOSSEINI, CRIMINALIZING SEXUALITY: ZINA LAWS AS VIOLENCE AGAINST WOMEN IN MUSLIM CONTEXTS, (2010).

220. President Olusegun Obasanjo commenting on the sentence of death by stoning under Shari'a penal codes at a public appearance on October 01, 2002. -Amnesty International- The Death Penalty In Nigeria (June 17, 2010, 2:15 PM), *available at* <http://asiapacific.amnesty.org/library/Index/ENGAFR440172004?open&of=ENG-382>

221. For a full description of this incident, *see* Human Rights Watch, The Miss World Riots, July 22, 2003, *available at* <http://www.hrw.org/en/node/12302/section/2> which was a continued impunity for killings in Kaduna State.

prostitute roundups as a means to barter sex from those who couldn't pay as little as \$6 for their release.²¹⁷ The Open Society Justice Initiative's report released on May 17, 2010 claims that police officers, both male and female, sodomized women with bottles and metal pipes.²¹⁸

In addition to claims about right to life and freedom from cruel and inhuman treatment, using the death penalty to regulate sexual behavior can be said to violate other basic human rights including the right to be free from discrimination, freedom of expression and association as well as the right to privacy. The description of the offense- zina in the Shari'a law which is targeted against the female folk jeopardizes these rights.²¹⁹ While this crime exists in the code of the northern states, a former President of Nigeria, Olusegun Obasanjo in October 2002, said "...we cannot imagine or envisage a Nigerian being stoned to death ... it has never happened. May it never happen."²²⁰

I. Role of Shari'a law

1. Inter-Communal Violence

"In recent years large-scale violence between religious and/or ethnic groups has cost thousands of lives. For example, in Kaduna State in 2002, Christian/Muslim riots coincided with the 2002 Miss World Beauty Pageant, and led to the deaths of some 250 people.²²¹ In February 2004 violent clashes shook Yelwa in Plateau State where at least 78 Christians and a number of Muslims were killed in well-organized attacks. Smaller scale attacks occurred in nearby villages. In May 2004 an attack by Christians killed an estimated 700 Muslims.²²² A little over a week later the violence spread to Kano where Muslims retaliated against Christians, resulting in the deaths of more than 200."²²³

The causes of inter-communal violence in Nigeria are complex. There are over 250 ethnic groups, some of which have long been in conflict over political power, land, and resources. While the government does not bear direct responsibility for killings perpetrated by individuals during these violent incidents, action and inaction by the authorities have contributed significantly."²²⁴

In the crises that hit Jos between 2001 and 2010, a period of eight years, over 3,000 people died. In September 2001, as many as 1,000 deaths were recorded. In May 2004, over 700 people died as a result of inter-communal clashes that hit Yelwa in the Southern part of Plateau State. In November 2008, at least 700 people were killed in a sectarian violence that hit Jos. "On January 17, 2010, violent clashes erupted again in Kuru Karama, Jos, resulting in the death of over 150 people, and on March 7, 2010, the villages of Dogo Nahawa, Zot and Rassat in Jos South Local Government Area, were attacked at about 3:00a.m, by hundreds of ethnic blood suckers, resulting in the death of over 400 people, comprising mostly, children, women and the aged (vulnerable population)."²²⁵

The major reasons why these killings have continued unabated are: according to the Human Rights Watch; "profound levels of poverty, the failure to investigate and prosecute those responsible for the violence, and discriminatory government policies"²²⁶

2. Compounding Place of Poverty

According to Amnesty International report, hundreds of people on death row in Nigeria did not have a fair trial and may therefore be innocent. The poor are at the greatest risk in Nigeria's criminal justice system. One must try to keep himself out of the system, or be able to pay the police to adequately investigate his case, paying for a good lawyer to defend you or paying to have your name put on a list of those eligible for pardon. Sometimes police asked for money for fuel, without which they could not visit witnesses or check alibis. Brothers John (50) and Kingsley (47) spent more than half of their life in prison. They were arrested in 1983 on suspicion of murder and waited 13 years for their trial to be concluded. On June 20, 1996 they were sentenced to death. They have no lawyer and never filed an appeal. They have been in Enugu prison for 25 years.²²⁷

Most of those on death row, whether in rich or poor countries, are likely to be poor and under-privileged. There is a relationship between poverty and capital punishment. For instance, Bryan Stevenson, executive director of the Equal Justice Initiative in Alabama, stated that 95% of the 3,350 people on death row in the U.S. are poor.²²⁸ As with most death penalty systems, the poor are remarkably targeted. Those that cannot afford a lawyer may not have one for their trial or if they are lucky enough to have one through legal aid that lawyer may not even bother to challenge the case. The poor are also the least likely to be able to afford paying bribes to the corrupt officials responsible for drawing-up the list of names for consideration of pardon. Convicts on death row in Nigeria are kept waiting with no knowledge of when their execution will take place. The process is shrouded in secrecy. In 2007 Amnesty International was able to confirm the executions of 7 prisoners, 6 of whom were never granted a chance to appeal their conviction. 41 percent of those currently on death row have never appealed or been able to appeal their sentences.²²⁹

222. For a full description of this incident, *see* Emeka Umeagbalasi, Country's Unlawful Killings – A Challenge for our Justice System, VANGUARD NEWSPAPER, March 25, 2010, *available at* <http://allafrica.com/stories/201003251219.html>

223. *Id.*

224. PHILIP ALSTON, *supra* note 185, at 47.

225. UMEAGBALASI *supra*.

226. *Id.*

227. Amnesty International, AFRICA: A NEW FUTURE WITHOUT THE DEATH PENALTY, (July 12, 2010, 5:30 PM), <http://asiapacific.amnesty.org/library/Index/ENGAFR010031997?open&of=ENG-392>

Poverty and enormous economic disparity within Nigeria have also been driving factors behind the use of guns which carries the ultimate sentence (death). Although Nigeria is the sixth leading oil producer in the world, few have benefited from this resource. Almost 70% of Nigerians live on less than one dollar a day and the average life expectancy is 48 years. This paradox is epitomized by the Niger delta region, where one of the indigenous groups, the Ogoni people, has struggled to obtain basic social services and to resist the destruction of their local environment.²³⁰ Police and soldiers have used small arms and light weapons to fire on protestors, often armed by major oil companies. Small arms have also been employed by rival gangs to control different parts of the “oil patch”. The gangs often “bunker” oil from pipelines and sell it to suppliers, using the revenue to purchase additional weapons.²³¹ Economic disparity has also fueled the enormous increase in crime in Nigeria, with thousands of unemployed young men turning to armed robbery.

It can be argued that poverty causes desperation. This is why you have mobs of young people ready to take out frustrations on other groups, especially when they can identify them as an opposing group, be it Muslim or Christian, “southerner” or “northerner.” Critics attribute this as the main cause of religious clash in Nigeria. In May 1999, violence erupted in Kaduna State over the succession of an Emir resulting in more than 100 deaths. In Kaduna in February-May 2000 over 1,000 people died in rioting over the introduction of criminal Shar’ia in the State. Hundreds of ethnic Hausa were killed in reprisal attacks in south-eastern Nigeria. In September 2001, over 2,000 people were killed in inter-religious rioting in Jos. In October 2001, hundred were killed and thousands displaced in communal violence that spread across the Middle-Belt states of Benue, Taraba, and Nasarawa.²³²

228. Readings from a Political Duo-ble, Poverty, DEATH PENALTY & POVERTY IN SINGAPORE, (May 29, 2010, 5:23 PM), *available at* <http://aussgworldpolitics.wordpress.com/2007/11/01/death-penalty-poverty-in-singapore/>

229. Aubrey Harris, Nigeria: Too Poor for Justice, CANADA L. BLOG (Aug. 10, 2010, 12:28 PM), http://www.amnesty.ca/blog2.php?blog=abolish_death_penalty&month=10&year=2008.

230. Wiwa O. Guns, *Health and the Exploitation of Natural Resources*. MED CONFL SURVIV. 2002, 18:407–10.

231. Ime .A. John, Aminu .Z. Mohammed, Andrew D. P Into, & Celestine .A. Nkanta, GUN VIOLENCE IN NIGERIA: A FOCUS ON ETHNO-RELIGIOUS CONFLICT IN KANO, (Jul. 29, 2010, 8:38 PM), *available at* <http://www.ipnw.org/PDF%20files/JohnMohamPintoNkanta.pdf>

232. *Id.*

According to Mr. Willy Mamah who has worked with both Human Rights Law Service (HURILAWS) and Department for International Development's (DFID) Access to Justice Program, the issue of poverty is central to the Death Penalty Debate. He gave an illustration with one Leonard Onah who was convicted for stealing 300 Naira (2 Dollars) armed with an iron rod. He could not be granted bail because he could not provide the sum of 10, 000 Naira (66 Dollars) bribe which the police demanded. He was eventually tried and sentenced to death. After many years on Death Row, he received amnesty and was released.²³³

3. Treatment by Police

Still on the issue of poverty, Damien Ugwu from the Nigerian Civil Liberties Organization (a human rights organization) said that his organization estimates that five people a day are being unlawfully killed by the police. Most vulnerable are unemployed youths accused of armed robbery.²³⁴

The Open Society Justice Initiative's report released May 17, 2010 alleges that police rub chemical mace and hot chili pepper into the genitals of those it arrests, drawing out dubious confessions officers use as an excuse to summarily execute those they describe as "armed robbers."²³⁵

Police kill on average 4.6 people per day, according to statistics provided to Human Rights Watch in April 2004 by Tafa Balogun, then Inspector-General of Police. Also, in November 2007, Acting Inspector-General of Police Mike Okiro, during his first 100 days of office, claimed the Nigeria Police Force (NPF) killed 785 people. One week later the late President Umaru Yar'Adua promoted him.²³⁶

Fifteen-year-old Emmanuel Egbo was killed by a police officer in Enugu in September 2008. According to witnesses, he was playing with other children in front of his uncle's house when three police officers came up to them. One officer pulled out a gun and shot the boy, claiming he was an armed robber. He was unarmed. In August 2009, his family discovered his body had disappeared from the mortuary. As of November 2009, the body is still missing.²³⁷

233. Human Rights Law Service, A Report on the Meeting of the Nigerian Coalition on Death Penalty Abolition, (Jun. 1, 2010, 7:47 PM), *available at* http://www.hurilaws.org/Projects/death_penalty_coalition_meeting_report.htm

234. Damien Ugwu, Police torture in Nigeria, *available at* <http://www.pambazuka.org/en/category/podcasts/42881>

235. Jon Gambrell, Nigeria Police Brutality: Cops Kill & Torture Victims' Genitals, Group Claims, THE HUFFINGTON POST, August 10, 2010, *available at* http://www.huffingtonpost.com/2010/05/17/nigeria-police-brutality-_n_579486.html

236. Dakar, Treatment by Police, NIGERIA: POLICE KILL, RAPE, TORTURE AND EXTORT SAYS RIGHTS GROUP, IRIN AFRICA, (Jul. 17, 2010, 8:49 PM), *available at* <http://www.irinnews.org/report.aspx?ReportId=89220>

4. Lack of Ability to Pay a Lawyer

The Punch Newspaper's report of Monday, July 5, 2010 describes prisoners awaiting trial as "too poor to afford a lawyer, with only one in seven awaiting trial having access to private legal representation."²³⁸

Amnesty International revealed how all too often, people not suspected of committing any crime are imprisoned along with convicted criminals. Some were arrested in place of a family member the police could not locate (like the case of Budman Oraekwu cited above); others suffer from mental illness and were brought to prison by families unable or unwilling to take care of them. Most have no lawyer to advocate on their behalf.

In one such case, Bassey, a 35-year-old woman with mental illness, was brought to prison by her brother, who said the family could no longer cope with her. Prison authorities classified Bassey as a "civil lunatic." Accused of no crime and never brought before a judge, Bassey spent almost three years in prison, sleeping on the floor in a cell with 11 women. After the intervention of PRAWA, a Nigerian non-governmental organization dealing with the welfare of prisoners, Bassey was finally transferred to a hospital, where she is now receiving treatment.²³⁹

237. Press Release, Amnesty International, Police "Kill at Will", (Dec. 09, 2009), *available at* <http://allafrica.com/stories/200912090696.html>

238. Seth Akintoye, Nigerian Criminal Justice System, a Failure- Amnesty International, THE PUNCH NEWSPAPER, Feb. 26, 2008, *available at* <http://www.punchng.com/Articl.aspx?theartic=Art200802261381181>

239. Amnesty International, Ability to Pay Lawyer, NIGERIA: CRIMINAL JUSTICE SYSTEM UTTERLY FAILING NIGERIAN PEOPLE; MAJORITY OF INMATES NOT CONVICTED OF ANY CRIME, (August 10, 2010, 1:32 PM), *available at* <http://www.amnesty.org/en/for-media/press-releases/nigeria-criminal-justice-system-utterly-failing-nigerian-people-majority>

V. Conclusion

With the debate on death penalty in Africa still emerging in comparison with the international debate, studies on death penalty in Nigeria becomes relevant.²⁴⁰

I believe this paper has contributed immensely in that regard, showing with practical illustrations that it is important for Nigeria to have a rethink as regards the imposition of the death sentence. Indeed, it may be argued that in any society where the government uses or supports the use of violence - whether or not through its legal system - it fosters the growth of a culture of violence. In this way, the use of the death penalty - the ultimate form of violence against the human person can lower the value of life in any society and encourage the use of violence by various members of society. In his treatise, *On Crime and Punishment*, Beccaria stated that capital punishment was counterproductive if the purpose of law was to impart a moral conception of the duties of citizens to each other.²⁴¹

Since one of the research questions of this paper is whether Nigeria in the implementation of the death sentence violates the international human rights standards which they are signatory to, it is pertinent to trace at this point, the international abolition history.

This section begins by analyzing the international abolition history. It then considers further developments by addressing the various hindrances. At the end, this section draws the conclusions that can be deduced from the preceding sections giving the necessary recommendations.

The current worldwide movement to abolish the death penalty has its roots in the liberal utilitarian and humanistic ideas initiated by the Enlightenment in Europe at the end of the 18th century.²⁴² Although the Enlightenment saw the emergence of partial abolitionism, the 19th century saw the abolition of death penalty by some countries; abolition experienced a delay in the early 20th century before the adoption of UDHR in 1948.²⁴³ After the adoption of UDHR, abolition gained ground. Consequently, the case for abolition has become more compelling as the years rolled by, with experience showing that executions abuse those involved in the process.²⁴⁴ Moreover, international lawmakers continue to urge the abolition of the death penalty, as it is a threat to fundamental human rights.²⁴⁵

240. LILIAN CHINWI, TOWARDS THE ABOLITION OF DEATH PENALTY IN AFRICA 199 (2007).

241. CESARE BECCARIA, TREATISE DEI DELITTI E DELLE PENE ("ON CRIMES AND PUNISHMENTS"), (1764).
Beccaria convinced statesmen of the inhumane nature of the capital punishment, which led to measures abolishing death penalty in Austria and Tuscany.

242. R. HOOD, THE DEATH PENALTY: A WORLDWIDE PERSPECTIVE, 9 (2002).

243. LILIAN CHINWI, *supra* note 238.

244. AMNESTY INTERNATIONAL, WHEN THE STATE KILLS...THE DEATH PENALTY V. HUMAN RIGHTS, 1(1989).

245. W. SCHABAS, THE ABOLITION OF DEATH PENALTY IN INTERNATIONAL LAW, 364 (2002).

Nigeria still retains the death penalty despite a growing international trend towards its abolition, and the fact that she is a party to major international human rights instruments. This paper showed that Nigeria fall short of her commitment under international law. As shown in this paper, the application of the death penalty in Nigeria conflicts with human rights in several ways. For instance, the death penalty is in itself a violation to the right to life as it allows for the taking of a convicts' life. Again, it violates the right not to be subjected to cruel and inhumane treatment both in context and method of execution. This cruelty extends beyond the prisoner, to his family, friends, administrators, among others. Finally, the death penalty in Nigeria violates the right to a fair trial which involves adequate investigation, personal disposition of the judge (this is necessary since capital trials in Nigeria are solely handled by a judge; there is no jury system), judicial error and delays in carrying out the death sentence, and manner in which the case is conducted (bursting at the seams with political influence). All these affect the outcome of the trial.

The problem with Nigeria is that they keep coming up with ideas, but most of the ideas just end up on paper. Nigeria is changing. With the civilian government, it is hoped that there will be more respect for human rights and human life, and broader public participation in state policy-making.

Nigeria should re-examine her policies on death penalty. One starting point is to establish commissions to study the range of questions associated with the use of capital punishment. Taking the crime of kidnapping, for instance, government should strengthen the police's ability to detect potential crimes before they occur and prevent them. The Federal Government needs to strengthen the police training and resources to increase police investigation capacity and effectiveness. Governments should also make available to the public, comprehensive and accurate information on the incidence and nature of crime and on the general effects of criminal policy and punishment on crime. In this way, members of society can objectively reassess the death penalty. Governments should also establish inquiries into the past use of the death penalty to punish political offences. Nigeria must shape her new future in the light of her past experiences.

Addressing the flaws in the judiciary, the government should work towards the causes of and solutions to criminal behavior and also pursue judicial reforms to cut delays in courts and ensure timely completion of the hearing and adjudication of cases. An independent judicial appointments body should be at the heart of the judicial selection process. Judicial appointments should be merit-based, with clear and well publicized election criteria; candidates should be required to demonstrate a record of competence and integrity. The removal process should be transparent and fair, with strict and rigorous standards; if there is a finding of corruption, a judge should be liable to prosecution.

An urgent review of the Shari'a penal laws should be done. It is vital to build a consensus of abolitionist opinion to the point where governments cannot fail to recognize it - or afford to ignore it. Governments, non-governmental groups, community and traditional leaders and members of the public should join the campaign to end the death penalty throughout the country. "Society, must continually seek solutions to the problems

affecting it, but not through the death penalty...When you take someone's life, you have not solved the body of social problems that led to the existence of crime."²⁴⁶

Death penalty has been stigmatized as deprecatory and absurd, in that law appears to avenge homicide by itself perpetrating homicide, and that in deterring people from assassination, it is presenting to them the debasing speculate of an assassination.

246. Amnesty International USA, "Africa: A New Future without the Death Penalty," (Aug. 10, 2010, 2:08 PM), *available at* <http://www.amnestyusa.org/document.php?lang=e&id=5174BE1C4652D122802569000069316C> (quoting statement made by Alain Ilboudo, of Congress for Democracy and Progress, Burkina Faso at a conference organized by Amnesty International involving governments, non-governmental groups, community and traditional leaders and members of the public to join in the campaign to end the death penalty throughout the continent).