

Appraisal of the Right to Life and Death Penalty in Nigeria

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ABSTRACT

The right to life is generally recognized as a very important right in any legal system. This right is absolute in some jurisdictions; however, limitations are placed on this right in some other jurisdictions to which Nigeria is included. One of the limitations placed on the right to life in Nigeria is the death penalty. These two concepts are closely related because they involve the state's responsibility in balancing the right to life of an individual and protecting the lives of the public by imposing the death penalty. Arguments made for and against the retention of the death penalty have gained global recognition and are still relevant in this modern age. Other contemporary issues in relation to these concepts are euthanasia, and extrajudicial killings. This paper is an appraisal of the right to life and death penalty in Nigeria.

Keywords: Appraisal, Right to Life, Death Penalty, Extrajudicial Killing, Euthanasia.

Introduction

The right to life is recognized as one of the Fundamental Human Rights in Chapter IV of the Nigerian Constitution. It is enshrined in Section 33 of the 1999 Constitution of the Federal Republic of Nigeria.^[1] Although the right to life is of great importance, it is however not absolute in Nigeria as the law has placed limitations on this right. The law in Nigeria seeks to balance the interests of all and so, although it respects the right to life, it also places certain limitations on this right to protect public interest and ensure peace and order in the society. It goes to show that no individual can be deprived of his right to life, except through the legally recognized exceptions, one of which is the death penalty.

As society progressed, arguments for and against the sustenance or retention of the death penalty began and the imposition of the death penalty became a controversial issue. This has led to the abolition of the death penalty by some developed countries, nevertheless, the death penalty is legal in Nigeria. The death penalty in Nigeria serves a retributive and deterrent function amongst other functions it performs; it however has a lot to be improved on to promote an effective criminal justice system. With the development of modern society, other matters which arose and gained recognition are the concepts of euthanasia and extrajudicial killings. All these matters need to be urgently addressed by the government and looked into also by the international community.

Right to Life

In Nigeria, the Constitution devoted a whole chapter to Fundamental Human Rights^[2], and in that chapter, the right to life ranks first. Section 33(1) of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended) specifically provides for the right to life thus: “*Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria*”.

The right to life imposes on individual and the State, the obligation not to deprive another intentionally of his right to life except within the permissible circumstances by law. In the case of *Olanrewaju Oni v The State*,^[3] the appellant administered acid chemical on his daughter which resulted in severe burns of the mouth and the lungs which eventually led to the girl's death. He was charged and tried for the murder of his daughter. The court found him guilty and sentenced him to death. This principle was also illustrated in the cases of *Lateef Adeniji v State*^[4], *Bassey Achibong v State*^[5] and *Pius Nweke v State*.^[6]

Also, the right to life imposes an obligation on the State to refrain from intentional and unlawful taking of life save in exceptional circumstances permissible by the Constitution in section 33(1)-(2) CFRN. The right to life as provided for and enshrined in section 33(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) also covers an already convicted person who although sentenced to death, has a pending appeal or review as the case may be. The State must allow the law to run its full course, and must not resort to hasty execution of the convict whose appeal is still pending before the Court of Appeal.^[7] This position was also upheld in the case of *Bello v A.G of Oyo State*,^[8] where the appellant was erroneously executed while his appeal was still pending in court.

Laws on the Protection of the Right to Life in Nigeria

The right to life has received a stamp of global recognition as it is protected under both domestic and international laws. Laws on the protection of the right to life in Nigeria include:

1. 1999 Constitution of the Federal Republic of Nigeria (CFRN)^[9]
2. Criminal Code Cap C38 LFN 2004^[10]
3. Penal Code Cap P3 L.F.N 2004^[11]
4. Universal Declaration of Human Right 1948^[12]
5. International Covenant on Civil and Political Right 1966^[13]
6. The African Charter on Human and Peoples' Rights 1981^[14]
7. Convention on the Rights of the Child 1989^[15]
8. African Charter on the Rights and Welfare of the Child^[16]

Limitations to the Right to Life in Nigeria

Within the Nigerian legal system, the right to life is subject to certain limitations. Section 33(1)-(2) CFRN provides for instance where someone could be deprived of their right to life where it states that:

A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, or such force as is reasonably necessary- (a) For the defence of any person from unlawful violence or for the defence of property; (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or (c) For the purpose of suppressing a riot, insurrection or mutiny.

Implementation of the Death Penalty by a Court of Law

The first limitation on right to life is execution of the sentence of a court in respect of a criminal offence of which the offender has been found guilty in Nigeria. This is provided for in section 33(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). In *Kalu v The State*, the Court upheld the constitutionality of the death penalty.

Defence of Self or Property

Section 33(2)(a) of the 1999 Constitution (as amended) provides for the defence of any person from unlawful violence, or for the defence of property. In this case however, the use of force must be that which is necessary and proportionate.

Lawful Arrest or Preventing Escape of a Person Lawfully Detained

It is provided for in section 33(2)(b) of the CFRN. Thus, this provision implies that where a person dies as a result of the use of force reasonably necessary and permitted by law to arrest or prevent the escape of a person lawfully detained, such person cannot be regarded as being deprived of his right to life.

Suppression of Riot and Mutiny

Where the life is taken for the purpose of suppressing a riot or mutiny, such killing is constitutional in Nigeria by virtue of section 33(2)(c) of the Constitution. In effect, where a person dies as a result of the use of force reasonably necessary and permitted by law to suppress riot or mutiny, such killing is not held to be a deprivation of his right to life.^[17]

Death Resulting from Acts of War

In addition to the above limitations, section 33(2) of the 1999 Constitution (as amended) clearly states that the killing of a person in the presence of war is lawful and justified. Death resulting from war with another State is sometimes inevitable due to the state of violence at the time.

Death Penalty

Death Penalty is described in Black’s Law Dictionary^[18] as “capital punishment”. It further defines capital punishment as a criminal penalty that involves killing the perpetrator; the sentence of death for a serious crime. The death penalty provides the legal backing to take the life of a person despite his right to life. It is an exception to the right to life as provided for in Section 33(1) of the Constitution of the Federal Republic of Nigeria which clearly recognizes the death penalty. The attitudes of nations towards the death penalty vary from one to the other, some countries have abolished the death penalty while some have retained it in their laws. Notably, the death penalty is usually attached to serious crimes. Nigeria is one of the countries in the world which still retains and administers the death penalty in its criminal justice system.^[19] In the popular case of *Onuoha Kalu v State*,^[20] the Supreme Court held that the death penalty was constitutional in Nigeria. It held *inter alia* that under section 30(1) of the 1979 Constitution now section 33(1) of the 1999 Constitution (as amended), the right to life although, fully guaranteed, is nevertheless subject to the execution of a death sentence of a court of law in respect of a criminal offence of which one has been found guilty in Nigeria would be constitutional. Also, in the case of *Adeniji v State*,^[21] the court held that the death penalty is clearly and expressly provided for by the Constitution. Similarly, the Supreme Court also reached the same decision in *Okoro v State*.^[22]

In relation to international law, some treaties and convention support the imposition of the death penalty. For example, Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) allows for the imposition of death penalty for only crimes that are capitalized in a written law at the time of the commission of the offence. Also, writers and philosophers like Thomson,^[23] Locke^[24] and Ross^[25] are of view that whoever kills has forfeited his own right of life. Apart from Nigeria, the death penalty is legal in other countries which include India, Japan, America, Zimbabwe, Libya, Thailand, Guyana, Uganda, China, North Korea, Jamaica, Singapore, Egypt, Barbados, Malaysia, Chad etc.^[26]

In Nigeria, the methods of execution include hanging,^[27] shooting,^[28] lethal injections,^[29] stoning.^[30]

Offences which Attract the Death Penalty in Nigeria

Under the Criminal Code, capital offences range from murder,^[31] treachery,^[32] treason,^[33] armed robbery,^[34] mutiny,^[35] and directing and controlling or presiding at an unlawful trial by ordeal leading to the death of another.^[36] Armed Robbery is also punishable by death under the Criminal Law of Lagos State if the offender uses violence on any person.^[37] Recently, in Nigeria, the offence of kidnapping was made a capital offence by some states with death as penalty on conviction. The states include Abia, Bayelsa, Akwa-Ibom, Anambra, Ebonyi, Enugu Imo and Edo.^[38]

The Penal Code, in addition to the above also has classified, capital offences as follows: fabrication of evidence leading to the conviction and execution of an innocent person,^[39] abatement of suicide by a person under 18 years of age or by an insane or intoxicated person,^[40] sodomy, adultery (zira), apostasy (ridda), rebellion (bagâ’i) and hiraba, translated as “highway robbery”.^[41]

Offenders Excluded from Death Penalty in Nigeria

Categories of offenders who are exempted from death penalty in Nigeria are: juvenile offenders, pregnant women and judicially insane or mentally ill persons. In relation to juvenile offenders, the court in *Modupe v State*^[42] stated thus: “if at the time the offence was committed, an accused charged with a capital offence has not attained the age of 17 years, it will be wrong for any court to sentence him to death, or even pronounce or record such sentence”.^[43]

The exemption of a pregnant woman from death penalty is consistent with the jurisprudence that the forbearance of a sentence of death on her is for the benefit of the unborn child. According to section 368(2) of the Criminal Procedure Act, pregnant women cannot be sentenced to death and their sentences should be commuted to life imprisonment instead. Section 300(3) of the Criminal Procedure Code, which is relevant in the Northern part of Nigeria, also includes a similar provision.^[44]

In relation to judicially adjudged insane or mentally ill persons, the provisions of the Nigeria Criminal Code exempt insane offenders including capital offenders from criminal liability as a result of the negation of their mental guilt. This is clearly stated in Section 28 of the Criminal Code. This insanity however must be proved for this defence to apply.

Contemporary Issues on The Right to Life and Death Penalty in Nigeria

At the forefront of these issues are the arguments canvassed for and against the retention of the death penalty in Nigeria. Although these arguments have existed long before today, they are still of great relevance in this modern age. Other issues include the concept of euthanasia, as well as extrajudicial killings.

Arguments Made for and Against the Retention of the Death Penalty

There are different views today on whether the death penalty system should be retained or abolished in Nigeria. The different views will be discussed below:

Points Canvassed of the Sustenance or Retention of the Death Penalty

One of the major points canvassed in favour of the sustenance of the death penalty is its retributive value. The death penalty is applied as a form of punishment for capital offences. Thus, offenders should be punished for committing a crime which is so grievous that it attracts the death penalty. According to Jeremy Bentham, death is regarded by most men as the greatest of all evil and it appears to be a more efficacious punishment than any other.^[45]

The first responsibility of the state, where such heinous crime takes place, is to ensure restitution and direct justice, for the victim.^[46] In line with this argument, justice sometimes requires the death penalty. Kant has opined that:

“the state may and indeed should put murderers to death, for they deserve it. Justice requires equality between offence and punishment, and only death is equal to death. The murderer has committed himself to a maxim of killing, and the state is only applying his own maxim to him in executing him.”^[47]

Also, advocates of the death sentence believe that execution serves as a strong deterrent for serious crimes such as murder, armed robbery and kidnapping, and that before the brutality of the death sentence is considered, the cruelty with which the victim was treated should not be forgotten.^[48] This in a way can bring sanctity and orderliness to the society. The Government in most States have always used punishment to discourage would-be

criminals from unlawful action. A practical example of general deterrence in Nigeria is the introduction of *Robbery and Fire Arms (Misc.) Offences Decree 1984* that mandated the killing of convicted armed robbers by firing squad.^[49] The aim of this was to deter others from committing armed robbery.

In line with the point on the deterrent value of the death penalty, it is believed that if murderers are sentenced to death and executed, potential murderers will think twice before killing for fear of losing their own life. James Fitzjames Stephen in 1864 speaking on the deterrent effect of the death penalty said that “no other punishment deters men so effectually from committing crimes as the punishment of death”.^[50] Fabiyi J.C.A, in *Akinyemi v State*^[51] on the deterrent nature of the death penalty, stated that the death sentence was well pronounced for the capital offence, and that it is a good law to serve as deterrence in society.

Another strong point which has been canvassed is that the death penalty prevents recidivism. A recidivist is a criminal who continues to commit crimes even after they have been punished.^[52] Those who rely on recidivism in supporting the death penalty argue that if an offender is killed for committing an offence today, he will not be able to commit the offence again.

In addition, capital punishment has been justified on the ground that it protects the public at large from one who seeks to or has the potential to harm members of the public. It is thus administered to ensure the safety and welfare of the public.

Apart from Nigeria, the death penalty is legal in other countries which include India, Japan, America, Zimbabwe, Libya, Thailand, Guyana, Uganda, China, North Korea, Jamaica, Singapore, Egypt, Barbados, Malaysia, Chad, Indonesia, Botswana, Bahamas, Cuba, Belarus, and Yemen.^[53]

Points Canvassed for the Abolition of the Death Penalty in Nigeria

One of the points canvassed for the abolition of the death penalty in Nigeria is that there is sometimes delay in the execution of convicted persons awaiting the death penalty. Generally, in most jurisdictions, the place where condemned prisoners are confined is called “death row”. Death row refers to the area in a prison where the inmates awaiting execution are housed.^[54] Due to delay on death row, in many cases, a convicted death row convict is subject to many years of waiting after the sentence is passed. The case of *Peter Nemi & Others v The State*^[55] is an example of a delayed execution. In this case the appellant had been on death row for eight years. The court frowned upon delay in executing prisoners on death row. In *Ogugu v The State*^[56], the Supreme Court held that the executive and judicial authorities must accept responsibility of ensuring that execution follows is as swiftly as practicable after sentence, allowing reasonable time to appeal and consideration of reprieve.

The practice of capital punishment has attracted a barrage of global condemnation. This is because the older methods of execution which include shooting, hanging, beheading and crucifixion inflict excruciating pains on the dying offenders, contrary to the prescriptions of the various international instruments. Thus, some developed *retentionist* nations^[57] invented and adopted the use of some modern methods (for example the use of gas chamber, and lethal injection). These modern methods were perceived by the inventing nations to have the advantage of killing swiftly and inflicting minimum pain.^[58] Furthermore, the fact that the death penalty is irreversible means that the death penalty would cause injustice where such execution was hastily carried out, or influenced by corruption and bribery. In effect, an erroneous judgment can lead to the execution of an innocent person.^[59] This was the case in *Nafiu Bello v Attorney General Oyo State*^[60] where the appellant was erroneously executed while his appeal was still pending in court. Opponents of the death penalty also contend that the irreversibility of the death penalty contradicts the idea that criminals can be rehabilitated.^[61]

Those who support the abolition of the death penalty also contend that the evolution of international law tends towards the abolition of the death penalty.^[62] Although death penalty is still implemented in Nigeria, it has however been abolished in Australia, Canada, South Africa, United Kingdom, Switzerland, Italy, Germany, and France.^[63] The UN second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aimed at the abolition of the death penalty (to which Nigeria is not a signatory).

However, the proponents of death penalty had reacted by stating that these cited international treaties and conventions are not legally binding on Nigeria and cannot be elevated to the status of law in Nigeria except their details are enacted into law by Nigeria’s valid legislative authorities.^[64] Thus, even if Nigeria entered into a treaty to that effect, such treaty will possess no force of law until domesticated and passed into law in accordance with section 12 of the 1999 Constitution (as amended).^[65]

Extrajudicial Killings: An Infringement on the Right to Life in Nigeria

The sanctity of human life is constitutionally and judicially recognised unless life is taken in pursuance of legitimate process.^[66] Extrajudicial killing refers to the killing of a person without the sanction of the due process of law applicable in the jurisdiction or territory where the killing occurs.^[67] This is in sharp contrast to a death sentence ordered by the court.^[68]

Extrajudicial killing is a problem peculiar to many nations of the world.^[69] National and international laws both frown upon extrajudicial killings. This is because it disregards the due process of law in relation to fair hearing, justice, and respect of the right to life. The legal limitations to the right to life are clearly stated in Section 33 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).^[70] Thus, extrajudicial killings are unlawful and unjust because the acts are carried out without any legal backing or justification.

Reports show that extra judicial killings are high in Nigeria.^[71] The courts have made certain pronouncements in relation to extrajudicial killings. In *Joshua v The State*^[72], the Court of Appeal denounced the killing by the police of two suspects who were under police custody before they were charged to court. Another example of extrajudicial killing by the police is seen in *Agbo v State*^[73] where the appellant was a police constable, and in the course of an argument which ensued between the appellant and the deceased, the appellant shot the deceased with his pistol and killed him. The Supreme Court of Nigeria condemned such action.^[74]

The pronouncement of the court in *Bello v A.G of Oyo State*^[75] is also very instructive. The facts are worth restating to drive home this point. The accused had a pending appeal against his death sentence in the Federal Court of Appeal. He was prematurely executed by the Oyo State Government before the determination of his appeal. In awarding damages against the State Government, the court remarked that the action was a reckless disregard of the life of the subject (Mr. Bello).^[76]

Extra-judicial killings can also take place by the practice of “jungle justice system”. “Jungle justice” system is a practice that is widespread in different parts of Nigeria. It is a practice whereby an alleged criminal is seriously beaten, humiliated, and in some cases, brutally tortured to death without recourse to criminal justice procedure. Indisputably, the practice of jungle justice is a clear disregard of the rule of law and in a resultant occurrence of the demise of the victim, the victim’s right to life is violated.^[77] The extrajudicial killings of four undergraduate students of the University of Port Harcourt by a mob action on the spurious allegations of theft in Aluu, a community in Port Harcourt, Rivers State, Nigeria, sometime in October 2012 is an unfortunate example of the of jungle justice system. Some of the suspects were later prosecuted in the court of law.^[78] The case of *Olabode v State*^[79] is likewise another Nigerian case that exemplifies the barbaric nature of the jungle justice system. On a subsequent murder charge against the accused person, the Court of Appeal outrightly condemned the practice of jungle justice system.

Euthanasia: The Position Under Nigerian Law

In recent times, the concept of euthanasia has come increasingly under the spotlight due to the on-going development of medicine. Euthanasia means an easy, quiet, and painless death in a procedure that involves the deliberate ending of the life of a patient with incurable or terminal illness either initiated by the patient, privy or the doctor in charge.^[80] Euthanasia could be active or passive, as well as voluntary or involuntary.^[81] Proponents of euthanasia have clamoured that this should not be regarded as murder which attracts the death penalty, but should be regarded as an act of mercy killing on humanitarian grounds. The right to life in recent times, in certain other jurisdictions, has been expanded to include the right to die

(euthanasia). Countries such as the Netherlands, Belgium and Luxemburg have legalized active euthanasia.^[82]

In Nigeria however, the right to life does not include the right to die. Euthanasia is a crime in Nigeria, this is because any intentional killing is classified as murder which attracts the death penalty irrespective of the consent of the person killed.^[83] It is necessary to point out also that euthanasia has no place in Nigeria because like in typical African customary laws, suicide and deliberate killing of the one who is ill is a taboo and an abomination in the country.^[84]

Also, section 316 of the Criminal Code defines murder, and states in subsection (5) that anyone who causes the death of another by administering any stupefying or overpowering drug is guilty of murder. Therefore, a physician who administers such drugs with the intention to cause the death of the patient will be held liable for murder.

Furthermore, under the Penal Code^[85] applicable in Northern Nigeria, and Criminal Code^[86] applicable in Southern Nigeria, consent of a person to an act causing death is not a defence. Thus, a medical practitioner who carries out euthanasia cannot rely on the consent of the person to be killed as a defence, it is still classified as murder and attracts the death penalty. Section 299 of Criminal Code provides that “consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused”.

It is worthy of note that the term “euthanasia” is not used under the Criminal Code or Penal Code in Nigeria. The Criminal Code and Penal Code do not distinguish between a killing that is carried out with the assistance of a physician or a request emanating from a patient or the state of the patient’s health. The term “euthanasia” is neither used in the Criminal Code nor the Penal Code, but it can be inferred that its practices are not allowed in Nigeria due to the fact that the law does not recognize such killings carried out in euthanasia. This is because any intentional killing is murder, and attracts the death penalty. Therefore, “mercy killings” otherwise known as euthanasia can be classified as murder^[87] in Nigeria which attracts the death penalty.^[88] The offence of murder is provided for in section 316 Criminal Code Act and section 220 of the Penal Law.^[89]

Admittedly, there is fear that the legalization of euthanasia will have detrimental effect with regard to vulnerable population and to the fact that it will transform a healing profession into a killing profession.^[90] It is equally observed that the reason for criminalization of euthanasia under the Nigerian criminal law is not far from cultural perspectives of Nigerians on the sanctity of human life.^[91]

Recommendations

1. The extensive derogations from this right in issues associated with self-defence or defence of property, suppression of riot, and killings of a suspect who resists arrest needs to be reviewed in the face of current realities in the country, as these defences are open to abuses.
2. Cases of extra judicial killings should be investigated and the offenders should be prosecuted. Nigerians should be urged to report cases rather than take matters into their own hands. The law should be allowed to run its full course.
3. The right to life should include right to proper health care, food and shelter: This is because proper health care, food, and shelter are necessary for the well-being of every human being. Without life’s essentials such as these, there would be more deaths in society.
4. Amendment of the law to take an express position on euthanasia: Neither the Criminal Code, nor and Penal Code make express mention of the term “euthanasia”. Although, the illegality of euthanasia can be inferred from the provisions in the Criminal Code and Penal Code which criminalize the killing of a person, the legislative arm in Nigeria is yet to amend the law in order to take an express position on euthanasia. Therefore, Nigeria should amend its law in order to take an express position on the practice of euthanasia, to promote clarity in interpreting and administering the law.
5. Offences in which no death occurred should not have the death penalty as its punishment: Section 1(2) Robbery and Firearms (Special Provisions) 1984 Act and Section 402(b) of the Criminal Code Act provides for the punishment of a death sentence for a case of robbery in which at, immediately, or before the time of robbery, the said offender wounds a person. In effect, a mere injury in a robbery incident would justify the death of the criminal offender, this should not be so.
6. A more efficient system of legal aid for accused persons charged with capital offences. This would go a long way in promoting justice for the accused person.
7. Delay in execution of the death sentence should be avoided: There have been cases where the criminal offender was on death row for many years, this should not be so^[92]
8. There should be no hasty executions of convicted persons who have not exhausted their right of appeal.
9. Less painful methods of execution should be applied: Nigeria already has a law legalizing lethal injections as an alternative to hanging as a mode of executing criminal offenders,^[93] however laws should be enacted to make room for more alternative modern modes of execution such as use of gas chamber. The use of older methods of execution such as stoning should be stopped.

Conclusion

The right to life as a fundamental human right has been recognized by various treaties and domestic laws. The courts have also upheld this right. Section 33 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) protects the right to life. However, this right is also not absolute as this same provision of the Constitution places certain limitations on it, one of which is the implementation of the death penalty by a court in respect of a criminal offence which a person has been found guilty in Nigeria. The State justifies the imposition of this punishment on the basis of national security, justice, and protection of public interest. However, it is necessary to tackle the problems associated with the implementation of the death penalty to ensure a more efficient criminal justice system.

Extrajudicial killings in the country are increasing at an alarming rate. Also, euthanasia is seen to take place illegally in practice, and the penal laws are yet to be amended to expressly mention the term “euthanasia” in order to criminalize it or allow it. There is therefore an urgent need for these matters to be addressed in the country. It is necessary for the government to be abreast of, and address matters such as these, and steps should also be taken where necessary.

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[5] (2008) WHRC Vol. p.45.
[6] (2008) WHRC Vol. p.106.
[7] Ibid.
[8] (1986) 5 NWLR (Pt. 45) 828, (1986) 12 SC 1.

- [9] Section 33(1) of (CFRN)
- [10] Sections 330 to 350 of the Criminal Code have provisions safeguarding the right to life. It bars offences endangering life or health
- [11] Section 220 to 231 of the Penal Code equally makes provisions for the safeguard of the right to life.
- [12] Article 3, Universal Declaration of Human Right 1948.
- [13] Article 6(1), International Covenant on Civil and Political Right 1966
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- [25] W.D Ross, *The Right and the Good* (Oxford University Press, 1934)76.
- [26] Oliver Smith, â€™Countries That Have Abolished or Retained the Death Penaltyâ€™ (2018) <<https://www.telegraph.co.uk/travel/maps-and-graphics/countries-that-still-have-the-death-penalty/>> accessed 16 February 2019.
- [27] This is the prescribed mode of execution in Nigeria by virtue section 37(2), 376 of Criminal Procedure Act, and section 273 of the Criminal Procedure Code.
- [28] This method was very much in use in Nigeria, especially during Military rule.^[28] Other countries like Thailand, Hong Kong, Vietnam, Utah, Iran, China, etc had at a point or another used this method in executing capital punishment. Some countries still use it till date, especially developing countries.
- [29] It has been provided for under section 402(1) of the Administration of Criminal Justice Act 2015.
- [30] Stoning (rajm) is a Sharia law punishment applied in some northern Nigerian states and reserved for Muslims. The punishment applies to offences under sharia law which include adultery, rape, incest, and sodomy.
- [31] Section 316, 319(1) Criminal Code Act, Section 221 Penal Code.
- [32] Section 49A Criminal Code.
- [33] Section 37 (1) Criminal Code, Section 411 Penal Code.
- [34] Section 402 Criminal Code, Section 1(2) Robbery and Firearms (Special Provisions) 1984 Act.
- [35] Section 52(1)(b) Nigerian Armed Forces Act, Cap A20 LFN 2004.
- [36] Section 208 Criminal Code.
- [37] Section 295(2) Criminal Law of Lagos State.
- [38] The Edo State House of Assembly on the 29th of July 2013 also keyed into the resurgence of the spirit of capital punishment in Nigeria when it followed the examples previously set by its Delta, Imo and Abia States counterparts in passing its anti-kidnapping Law which provides for the death penalty for the offence of kidnapping.
- [39] Section 159 (2) Penal Code.
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- [48] Udosen Jacob Idem and Nkokom Eyo Udofia, â€™Sentencing and the Administration of Criminal Justice in Nigeriaâ€™ (2018) 4(1) Donnish Journal of Law and Conflict Resolution <<https://donnishjournals.org/djlc/pdf/2018/january/Idem-et-al.pdf>> accessed 24 January 2019.
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- [50] A.B Dambazzau, *Criminology and Criminal Justice* (2nd Edition. Ibadan: spectrum book limited, 2007).
- [51] (1999) 6 NWLR 465, 607.
- [52] Recidivist, <<https://dictionary.cambridge.org/dictionary/english/recidivist>> accessed 12 February 2019.

[53] Oliver Smith, “Countries That Have Abolished or Retained the Death Penalty” (2018) <<https://www.telegraph.co.uk/travel/maps-and-graphics/countries-that-still-have-the-death-penalty/>> accessed 16 February 2019.

[54] P. Hudson, “Does Death Row Phenomenon Violate a Prisoner’s Rights under International Law?” (11) European Journal of International Law 817 (2000).

[55] (1990) SC 303.

[56] (1994) 9 NWLR (pt. 366) 1 47.

[57] Retentionist nations is a term used to describe nations which retained the death penalty.

[58] Akingbehin E.O. “International Law Approach to Modern Methods of Executing Condemned Prisoners: Elixir to Painful Killings” (2017) (14) (1), U.S. “CHINA Law Review, David Publishing Company <<http://www.davidpublisher.org/Public/uploads/Contribute/58c64e048b3c8.pdf>> accessed 5 February 2019.

[59] Anwo J.O. and Arowolo C.A, “Critical Analyses of Abolition of Death Penalty in International Law: An analysis of death penalty under the United States and Nigerian Laws” <www.ajol.info/index.php/aujilj/article/download/82408/72563> by J.O. Anwo -2011> accessed 12 February 2019.

[60] (1986) 5 NWLR (pt. 45) 828.

[61] Nzeribe Ejimneonye Abangwu, “Death Penalty in Nigeria: To Be Or Not To Be: The Controversy Continues” (2013) (3) Arabian Journal of Business and Management Review <[http://arabianjbm.com/pdfs/OM_VOL_3_\(3\)/3.pdf](http://arabianjbm.com/pdfs/OM_VOL_3_(3)/3.pdf)> accessed 17 January 2019.

[62] Ibid.

[63] Amnesty International, The Death Penalty Worldwide <<https://www.infoplease.com/world/political-statistics/death-penalty-worldwide>> accessed 16 February 2019.

[64] Ibid.

[65] Section 12 (1) of the 1999 Constitution (as amended) provides that “No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

[66] *Amoshina v State* (2011) All FWLR (Pt. 597) 601 at 618.

[67] The Right of the Suspect and the Threat of Extra-Judicial Executions in Nigeria, (2015) (3)(1) Akungba Law Journal, Faculty of Law Adekunle Ajasin University 69.

[68] Ibid.

[69] Germany, Palestine, Iraq, Central Africa, Afghanistan, Bangladesh, Thailand, the Philippines and the United States among others which have reportedly been site of a high level of extrajudicial killing.

[70] Section 33(1) -(2) 1999 Constitution (as amended).

[71] Iwilade Akintayo, “Legality of death penalty” (2013) <<http://thenationonlineng.net/legality-of-death-penalty/>> accessed 19 January 2019.

[72] (2009) N.M.L.R 78 at 79.

[73] (2006) NWLR (pt.997) 545, (2006) 1 S.C (pt.4) 3.

[74] *Ibikunle v State* (2007) All FWLR (Pt. 354) 209, at pp. 240-241, where Onnoghen, JSC also made a notable pronouncement on the need for the Nigeria Police to eschew extra-judicial killings of criminal suspects.

[75] (1986) 5 NWLR (Pt. 45) 828, (1986) 12 SC.1

[76] Subsequent amendments of relevant laws have now provided that an appellant in a matter must file for a stay of execution separately as the appeal in itself will no longer serve as a stay of execution. As established in *UBN v Fajebi Foods & Another* (1994) 5 NWLR 344, 342-343, and also *Chief D. Achor & 1 Other v M. Aduku & 1 Other* (2005) 27 NWLR 178, certain conditions precedent must be met before a stay of execution is granted by the courts.

[77] Enobong Mbang, “Right to Life: Tackling The “Little Foxes That Spoil The Vine” (2018) 9 (1) NAUJILJ <<https://www.ajol.info/index.php/aujilj/article/view/168808>> accessed 10 December 2018.

[78] Jimitota Onoyume and Davies Iheamnachor (2017), “Police Sergeant, 2 Others Sentenced to Death over Murder of 4 Uniport Students,” *Vanguard*, available at <<https://www.vanguardngr.com/2017/08/aluu-four-police-sergeant-2-others-sentenced-death-2/>> accessed 14 February 2019.

[79] (2007) All FWLR (Pt. 389) 1301.

[80] A.B Abubakar, The Right to Die: How Far Right? Islam and Other Religious Responses, (2012) (3) *Human Rights Review: An International Human Rights Journal*;144.

[81] Mike Chekwube Obi, “A Critical Appraisal of Euthanasia Under Nigerian Laws” (2014) <<https://www.ajol.info/index.php/aujilj/article/viewFile/136296/125786>> accessed 24 January 2019.

[82] Ibid.

[83] ss.311, 326, 316(5) Criminal Code Act.

[84] Mike Chekwube Obi, “A Critical Appraisal of Euthanasia Under Nigerian Laws” (2014) <<https://www.ajol.info/index.php/aujilj/article/viewFile/136296/125786>> accessed 24 January 2019.

[85] Cap.P3 LFN 2004.

[86] Cap.C38, LFN 2004.

[87] Section 316 Criminal Code, and Section 220 Penal Code.

[88] Section 319 Criminal Code Act, Section 221 Penal Code.

[89] C.O. Okonkwo, “Medical Negligence and the Legal Implication” in B. C. Umerah (ed.), *Medical Practice and the Law in Nigeria*. (Lagos: Longman, 1989), 119 – 120.

[90] Mike Chekwube Obi, “A Critical Appraisal of Euthanasia Under Nigerian Laws” (2014) <<https://www.ajol.info/index.php/aujilj/article/viewFile/136296/125786>> accessed 24 January 2019.

[91] Ibid.

[92] The case of *Peter Nemi & Others v The State* (1990) SC 303 is an example of a delayed execution. In this case the appellant had been on death row

for eight years.

[\[93\]](#) Administration of Criminal Justice Act, s.402.