



## RETHINKING THE JURISPRUDENCE OF RETRIBUTION IN CAPITAL

### PUNISHMENT IN NIGERIA

By:

JOSEPH RENGKAT\*  
GARBA SHAMTU PWUL\*\*

#### ABSTRACT

*The raging debate on the propriety of capital punishment in light of the growing support for the preservation and protection of human rights across the world prompted this work. The paper examines the concept of capital punishment, considering various theories of punishment and their justification. The legal frameworks that provide for the existence of capital punishment under Nigerian criminal law were explored. The paper further examines constitutional and human rights issues related to capital punishment, including provisions on the right to life and human dignity under the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Universal Declaration of Human Rights, the African Charter on Human and People's Rights, and other international instruments. A comparative insight was drawn from countries like the UK and South Africa, which have abolished capital punishment. A critical analysis of the jurisprudence of retribution, as one of the justifications for capital punishment, was also considered. It was found that retributive theories of capital punishment have failed to resolve the problem of crime. Secondly, crime is a product of environmental factors, and it is the responsibility of the state to create an environment free of crime. The paper posits that capital punishment is a derogation from the right to life and human dignity, as the state is not the author of human life and therefore has no justification to take it. The following recommendations have been proffered. Nigeria should amend its Constitution to make the provisions of Chapter II justiciable, thus enabling the state to fulfil its responsibilities in providing welfare to its citizens, which could significantly address the issue of crime; the right to life should be made unqualified under the Nigerian Constitution, as is the case in the UK and South Africa and offenders should serve their sentences while alive and should make restitution to the families of their victims. The paper employed a doctrinal research method, consulting textbooks, articles, statutes, and other relevant materials for this work.*

**Key Words: Capital Punishment, Retribution, Jurisprudence, Right to Life, Right to the Dignity of a Person**

## **1.0 Introduction**

One of the objectives of criminal law is to punish people who have deviated from the norms and values of society. Punishment is essential for the control of deviant behavior and the preservation of society from deviants. It has been posited that whatever view one holds about penal law, no one will question its importance in society. This is because it is the law in which men place their ultimate reliance for protection against the deepest injuries that human conduct can inflict on individuals and institutions<sup>1</sup>.

The jurisprudence of retribution is core in the philosophy of punishment, particularly in the context of capital offences. Capital Punishment is rooted in the ancient marble of ‘an eye for an eye’. Retribution seeks to justify punishment which involves wreaking vengeance and infliction of pain by the society on behalf of itself or the injured individual on the wickedness of the offender.<sup>2</sup>In Nigeria, the jurisprudence of retribution finds expression in our Statute books like the penal and criminal codes and other Statutes. Grave offenses like Murder, Arm robbery, kidnapping, treason and terrorism.

The persistent dependence of retribution as a primary basis for capital punishment raises profound constitutional, moral and human right question. It is an axiomatic fact that the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees right to life and dignity of human person.

The Constitutional provision is also fortified by international instruments like the International Covenant on Civil and Political Rights, **the African Charter on Human and Peoples’ Rights,**

---

\* Lecturer, Faculty of Law Plateau State University of Bokkos, Plateau State, Nigeria. email: josephrengkat@plasu.edu.ng. phone no: 07031601412

\*\* Garba Shantu Pwul, SAN, is the Principal Partner and Founder of G.S.P. Pwul, SAN and Partners, Trust White House, 34, West of Mines Jos, Plateau State. He can be reached by Phone on: 08037030221 Or via e-mail at shampwul@yahoo.com.

<sup>1</sup> Herbert Wechler, ‘The Challenge of Model Penal Code’ by G. Williams in *Text Book of Criminal Law* (2<sup>nd</sup> Edition Stevenson & Sons London, 1983)

<sup>2</sup> C.O Okonkwo, *Criminal Law in Nigeria* (2<sup>nd</sup> Edition Spectrum Books Ltd. Ibadan, 2009) 8

Universal Declaration on Human Rights, of which Nigeria is a signatory, impose obligation that challenge the retributive justice in capital offences.

With the growing trend of democracy and the respect for human rights which is becoming a global song and a universally accepted currency across the globe, there is a global trend that reveals a steady shift away from capital punishment with emphasis on restorative and rehabilitation justice.

Against these backdrops, this work seeks to interrogate the philosophical basis of retributive justice; examine its application within the Nigerian legal framework and evaluate its compatibility with the Constitutional and International human rights laws. The efficacy of retribution in capital offences in the light of the present realities of restorative and rehabilitative justice that is applicable to the criminal justice globally.

## 2.0 CONCEPTUAL CLARIFICATIONS

- a. **Retribution:** It refers to the punishment imposed as repayment or revenge for the offence committed<sup>3</sup>. Retribution is a concept that has been used in the historical legal system to justify punishment for criminal actions. It involves the idea that a wrongdoer received a punishment that is equivalent to the harm they have caused<sup>4</sup>.
- b. **Capital offence:** A capital offence refers to a crime that is so severe that the death penalty is considered an appropriate form of punishment, such as murder, espionage, or treason.<sup>5</sup> It also refers to a crime for which the death penalty may be imposed<sup>6</sup>
- c. **Capital Punishment:** It refers to a sentence of death for a serious crime, also termed death penalty<sup>7</sup>. Capital punishment or the death penalty is an institutionalised practice designed to result in deliberately executing persons in response to actual or supposed

---

<sup>3</sup>Garner B.A *Black Law Dictionary* 9<sup>th</sup> Edition 2009)1431

<sup>4</sup> `Retribution Defined – Simplified' <https://criminal.laws.com/general-criminal-law/objectives/retribution> accessed on 30/1/2026

<sup>5</sup> Legal Dictionary><https://legal.dictionary.net/capital-offence> accessed on 2/2/2026

<sup>6</sup> Garner B.A (n<sup>3</sup>) 1186

<sup>7</sup> Ibid at 238

misconduct and following an authorized, rule-governed process to conclude that the person is responsible for violating norms that warrant execution<sup>8</sup>.

- d. Punishment:** Punishment is any form of a fine, a penalty or a period of confinement inflicted upon a person convicted and sentenced for an offence, by a Court of competent jurisdiction, upon the authority of criminal law<sup>9</sup>. It is also defined as a sanctionsuch as fine, penalty, confinement, or loss of property, right or privilege – assessed against a person who has violated the law<sup>10</sup>

### 3.0 THEORITICALBACKGROUNDOF RETRIBUTIONVs THORIES OF PUNISHMENT

**Retribution** is one of the oldest theories of punishment, which is rooted in the ancient principle of lextallionis (an eye for an eye) a precept in the Old Testament which is (and a virtually identical precept in the koran). A recent textbook defines retributive punishment as punishment meted out because it is deserved<sup>11</sup>. One of the theories of retribution is that punishment is inflicted in order to make the offender pay for the offence<sup>12</sup>. Another theory of retribution is fair desert ,this entails looking back at the circumstances of the crime and deciding what punishment the accused deserved from his conduct having regard to his responsibility for the crime<sup>13</sup>.

Retribution or just desert is the possible link between punishment and the idea of justice  
As C.S. Lewis has put it

*... when we cease to consider what the criminal deserves and consider only what will cure him or deter others, we are have tacitly removed him from the spheres of justice altogether, instead of a person, a subject of rights , we now have a mere object, a patients, a case<sup>14</sup>*

---

<sup>8</sup> `Capital Punishment`><http://ieps.utm.edu> accessed on 9/3/2026

<sup>9</sup> Peter Ocheme, *The Nigerian Criminal Law* (2<sup>nd</sup> Edition Liberty Publication, 2008) P.

<sup>10</sup> Garner B.A (n<sup>3</sup>) 1353

<sup>11</sup> Richard A. Posner, `Retribution and Related Concept of Punishment`><https://www.journals.uchicago.edu/doi/epf> accessed on 2/2/2026

<sup>12</sup> John Cottinham, `Varieties of Retribution` > <https://www.johncottingham.co.uk/reasources/varieties-of-retribution> accessed on 2/2/2026.

<sup>13</sup> C.O Okwonkwo, Okwonkwo & Naish *Criminal Law in Nigeria* (2<sup>nd</sup> Edition Spectrum Books LTD 2009)28

<sup>14</sup> C.S Lewis, `The Humanitarian theory of Punishment` in W.Hooper(ed)(London1988)101

The link between punishment and idea of justice will be perfect if it applies across offenders guilty of a designed crime regardless of any extraneous factors such as socioeconomic background, ethnic origin<sup>15</sup>. Asserting on the penal theory of retribution, Kant posited that the reason why punishment is imposed must always be because the individual on whom it is inflicted has committed a crime<sup>16</sup>. The breaking of the law itself is a sufficient condition for just punishment.<sup>17</sup>

According to Immanuel Kant, Punishment is the payment in kind of the evil committed by a person. He clearly puts it that 'whoever has committed murder must die, this is the case no judicial substitute or surrogate that can be given or taken for the satisfaction of justice. There is no likeness or proportion between life and death'<sup>18</sup>. One of the importance of retribution is that it acts as a check on the forward looking principles of deterrence or reform.<sup>19</sup>

I. **Reformative or Utilitarian theory of Punishment.** This theory is predicated on the principle that the object of punishment is to reform. The offender should be reformed as such, the custodial center should be converted into reform homes<sup>20</sup>. According to some authors, crime must be regarded as a disease, hence, a sick person does not need punishment but cure. Accordingly, prisons and similar institutions should be replaced with establishment devoid to psychological analysis and therapy<sup>21</sup> This theory of punishment views sanction as an instrument of rehabilitation for the purpose of molding the behaviour of the criminal. This is because no one is born a criminal in the society but the environment makes the person so<sup>22</sup>. The reasons behind the offence must be examined with a view to correcting the offender and absorbing him back into the

---

<sup>15</sup>

<sup>16</sup> John Cottinham see n<sup>12</sup>

<sup>17</sup> ibid

<sup>18</sup> Immanuel Kant, 'The Metaphysical Element of Justice' (translated by John Ladd ><https://michiganlawreview.org> accessed on 2/2/2026

<sup>19</sup> ibid

<sup>20</sup> Shikha Mishra, 'Theories of Punishment' *Imperial Journal of Interdisciplinary Research* (2016)(12)>><http://www.onlinejournal> accessed on 3/2/2026

<sup>21</sup> J.M. Elegido, *Jurisprudence* (Spectrum Book Ltd Ibadan 2007) 216

<sup>22</sup> Shikha Mishra (n<sup>20</sup>)

mainstream of the society<sup>23</sup>. The purpose of this principle is the individualization of treatment; herein; the offender's sense of responsibility to the society is developed and build up so that he will become responsible to the society<sup>24</sup>. The principle hinges on the fact that the society hate the crime not the criminal and that nobody is born a criminal. It is only the consequences of those circumstance which were around him <sup>25</sup>. The foregoing position has found judicial blessing in the India Court where Justice Ksrishna Iyer in *Mohd Gaisuddin V. State*<sup>26</sup> where it held that '*subculture that leads to anti-social behavior has to be countered not by cruelty but by re-culturalization*'. According to this principle, by studying each criminal, history, associates, environment and mental capacity society can attempt to guide the criminal back to the society<sup>27</sup>

## ii. Deterrence

The principle of punishment embraces two concept: special deterrence and general deterrence. The former is aim at deterring a particular offender from repeating the crime, while the latter is aimed at deterring people generally from committing crime<sup>28</sup>

Simply put, deterrence is the use of punishment to prevent the offender from repeating his offence and to demonstrate to other potential offenders what will happen to them if they follow the wrong doers example<sup>29</sup>. For example the death penalty for instance, makes it impossible for a criminal to commit any crimes; similarly a criminal in person is also prevented from committing many offenses; a reckless driver whose driving license is suspended for a period is hindered from committing similar driving offenses<sup>30</sup>.

This theory of punishment as explained above worked in two ways: first an offender, would be put in prison to prevent him from committing another crime for specific period.

---

<sup>23</sup> Ibid

<sup>24</sup> See Okonkwo & Nash (n<sup>19</sup>)36

<sup>25</sup> Shikha Mishra,(n<sup>20</sup>)

<sup>26</sup> Joel Meyer, 'Reflections on Some Theories of Punishment' *Journals of Criminal Law and Criminology* (1969) (59)V

<sup>27</sup> Amnesty International, *When the State Kills*, London Amnesty International Publication(1989)18

<sup>28</sup> ibid

<sup>29</sup> Joel Meyer (n<sup>26</sup>)

<sup>30</sup> J.M. Elegido (n<sup>21</sup>)

Second, the incapacitation is designed to be so unpleasant that it will discourage the other offender from repeating this criminal behavior.

As a result, it sends shock-waves thereby serving as a deterrence to committing any offence<sup>31</sup>. The success of deterrent theory can only be measured by taking into consideration of data when there is break down of law and order.<sup>32</sup>

#### **4.0 LEGAL FRAME FOR CAPITAL OFFENCES IN NIGERIA.**

Capital offense is legally recognized under the Nigerian law. The Constitution of the Federal Republic of Nigeria expressly provides for capital punishment. Also, capital punishment provisions are also entrenched into the two principal penal code that applies across Nigeria. The Penal Code and the Criminal Code<sup>33</sup>.

##### **i. Criminal code**

The Criminal code applies to states in the Southern part of Nigeria; it is applicable to in States that have not expressly enacted their Criminal Code. Lagos States has enacted its Criminal Code which applies in Lagos State<sup>34</sup>. Offenses that attract capital punishment under the Criminal Code include murder<sup>35</sup>, treason<sup>36</sup>, trial by ordeal<sup>37</sup> among others.

##### **ii. Penal Code**

The Penal Code applies to Northern part of Nigeria except for states like Plateau that have enacted their penal code. Culpable homicide punishable with death<sup>38</sup>, Treason<sup>39</sup>, Fabricating false evidence<sup>40</sup>, Aiding suicide<sup>41</sup> Brigandage among others. The

---

<sup>31</sup> Joel Meyer (n<sup>26</sup>)

<sup>32</sup> Ibid

<sup>33</sup> Criminal Code Act Cap 77 LFN, 2004 applicable to southern Nigeria. The Penal Code Cap 89 LFN, 2004 applicable to Northern Nigeria. Through some states in Southern and Northern Nigeria have enacted

<sup>34</sup> Criminal Law of Lagos State 20151

<sup>35</sup> Section 316 & 319 of the Criminal Code Act CAP 77 Laws of the Federation 2004

<sup>36</sup> Section 37 ibid

<sup>37</sup> Section 208 Ibid

<sup>38</sup> Section 221 of the Penal Code Law CAP 89 Laws of the Federation 2004

<sup>39</sup> Section 411 ibid

<sup>40</sup> Section 159(2) Ibid

Sharia Penal Code which is also applicable in Northern Nigeria in States like Kano, Zamfara prescribe death penalty. The Sharia Penal Code applicable in Zamfara States prescribes Adultery (Zina)<sup>42</sup>, Sodomy<sup>43</sup>, incest<sup>44</sup>, Arm Robbery (Hiraba)<sup>45</sup>, Intentional homicide<sup>46</sup>, death resulting in trial by Ordeal<sup>47</sup>, Cannibalism<sup>48</sup> among others are offenses that attracts death penalty.

### **iii. Miscellaneous Provision**

Section 1(2)a of the Robbery and Fire Arms (Special provision) Acts also provides for death penalty in case of Arm Robbery and illegal possession of Arms. The Lagos and Anambra States also provide for the offense of kidnapping as a Capital offence<sup>49</sup>.

The Air-force and Army Act also provide for Capital offenses: mutiny<sup>50</sup>, Failure to suppress Mutiny<sup>51</sup>, Treachery<sup>52</sup>, Cowardice<sup>53</sup>, Offenses in relation to operation<sup>54</sup> and desertion during war<sup>55</sup>, aiding the enemy during war<sup>56</sup>

## **5.0 CONSTITUTIONAL AND HUMAN RIGHTS ISSUES ON CAPITAL PUNISHMENT**

With the growing trend of democracy across the world and the respect for human right which is becoming a global story across the world, capital punishment as a mode of punishment is not only becoming barbaric and outdated, but it has become an inadequate

---

<sup>41</sup> Section 227 Ibid

<sup>42</sup> Section 128 of the Sharia Penal Codes of Zamfara State 2000. Other Northern States that have introduced State the Sharia Laws like Jigawa and Kano have similar provisions that provides for capital offenses.

<sup>43</sup> Section 131(b) Ibid

<sup>44</sup> Section 133b Ibid

<sup>45</sup> Section 153(c) Ibid

<sup>46</sup> Section 200 Ibid

<sup>47</sup> Section 404 Ibid

<sup>48</sup> Section 408 Ibid

<sup>49</sup> Section 2(2) of the Lagos State Kidnapping and Prohibition Law 2017. & Section 315(2) of the Criminal Law of Anambra State State

<sup>50</sup> Section 45 the Arm Forces Act CAP A 20 Laws of the Federation 2004

<sup>51</sup> Section 46 Ibid

<sup>52</sup> Section 47 Ibid

<sup>53</sup> Section 48 Ibid

<sup>54</sup> Section 49 Ibid

<sup>55</sup> Section 56 Ibid

<sup>56</sup> Section 53 Ibid

means of addressing crime in the society. Nigeria is signatory to different international conventions that champion and promote human rights, dignity and preservation of human life. With the provision of the Nigerian Constitution and other international instrument that seek to promote, preserve the right to life and the dignity of human person; capital punishment has no doubt created a conflict as to the existence of those rights.

**(i) The 1999 Constitution of the Federal Republic of Nigeria (As Amended).**

The Constitution of the federal Republic of Nigeria, 1999 (As Amended) has provided for the preservation and sanctity of human life of every person save in the execution of death sentences<sup>57</sup>. The Constitution further provides that every individual is entitled to the dignity of his person and shall not be subject to torture or to inhuman or degrading treatment.<sup>58</sup>

According to Professor Nwabueze, death penalty offends the provision against inhuman treatment and is therefore constitutionally impermissible.<sup>59</sup> The 1999 Constitution validates the international killing of a person in certain circumstances and so provide that a person is not to be regarded as having deprived of his life in violation of the guaranteed life if he dies as a result of the use of force to such extent and in such circumstances as are permitted by law.<sup>60</sup>

Drawing from the foregoing, there appears to be conflict in the Constitution as it guarantees and preserve the right to life and dignity of human persons on the one hand while depriving same under the provision of Section 33 (1) and 34 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Capital punishment does not only derogate human life but also dehumanize the dignity of human person a complete antithesis to the ideal of Human Rights that the Constitution seeks to promote and preserve.

---

<sup>57</sup> Section 33(1) Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

<sup>58</sup> Section 34(1) Ibid

<sup>59</sup> Nwabueze B.O; *The Presidential Constitution* (Enugu Nwanfine Publisher Ltd 1982). 10

<sup>60</sup> See 33(2) 1999 Constitution of the Federal Republic (As Amended)

Nigeria is a signatory to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and such Convention abhors every kind of torture against any person.

While recounting his ordeal on a death row before he was granted amnesty by the Enugu State Government, Mr. Leonard Odoh, Chronicled his ordeal in the following words:

*It wasn't long before I realized the full implication of my being on a death row ... the date is memorable, September 10, 1984. That day was horrific .... Eight men – full grown men whom I share the cell and fate were called by their names shackled hands and legs and gagged to the gallows --- and I never saw them again. Few days later, another ten men full grown were called by their names, shackle hands and legs taken out to be executed by firing squad ... and I never saw them again. We prayed, we cried, we mourned over friends and companion--- we refused to eat even the dog's food they offered.<sup>61</sup>*

The foregoing is a graphic representation and the psychological inhuman and degrading treatment convicts go through as they await their execution. The Civil Liberties Organization of Nigeria has reported a discovery on inmates on death row in Nigeria who have gone insane from the intolerable pressure awaiting their execution, sometimes as long as 20 years. Thus, apart from the fact that capital punishment is cruel and inhuman. It is also inherently degrading that reject the humanity of the offender<sup>62</sup>.

(ii) **African Charter on Human People's Right 1987**

Nigeria is not only a signatory to the African Charter on Human and People's right, but the said Charter has been ratified as and enacted as part of the municipal laws applicable in Nigeria's pursuant to the provision of section 12 of the 1999 Constitution (as

---

<sup>61</sup> 'Death Penalty', *Vanguard*(Lagos 12 November 2002)

<sup>62</sup> The Civil Liberties Organization, ' Reports on Human Conditions and Human Rights Abuses at the Kirikiri Maximum Security Prison' 1990

amended).By implication, the provision of the African Charter and Peoples become part of Nigeria's law by virtue of the African Charter on Human and People's Right (Ratification and Enforcement )Act Cap A9 Laws of the Federation 2004.

Be that as it may, the provision of Article 4 of the African Charter also provides and uphold the sanctity to life and dignity of human person. The said provision provides thus: 'Human beings are inviolable every human being shall be entitled to respect for life and the integrity of his person, no one may be arbitrary deprived of his life' .

Article 5 of the said Charter further provides that every individual have the right to respect of the dignity inherent in human being.

The African Court on Human and People's Right held in *African Commission on Human and People's Right V. Kenya*<sup>63</sup> held that 'the right to life is the cornerstone on which the realization of all other rights and freedom depends. The deprivation of someone's life amounts to eliminating the very holder of these rights and freedom.'

'The African Charter's provision does not contain any express exception for death penalty like other international human rights instrument<sup>64</sup>. The justification of death penalty in African states is hinged on the provision of Article 4:'no one may be arbitrarily deprived of his life. This implies that non arbitrary deprivation of life is permissible'.

The African Court has not adjudicated on whether death penalty per se arbitrary deprives a person right to life. However, the Court came close in the case of *Rajabu ORS V Tanzania*<sup>65</sup> where the Court held that:

“laws that provides death penalty as a mandatory sentence

---

<sup>63</sup> African Commission on Human and Peoples' Right V Kenya (Merits) 2017 2 AFCLR2

<sup>64</sup> See International Convention and Political Rights (“ICCPR”) Art 6 (2) Expressly permitting Death Penalty Subject to a number of restriction

<sup>65</sup> (Merits & reparation)s (2019)3 AFCLR 539

for people convicted of certain crimes violate the arbitrariness clause in Article 4. The Court note that the only basis for permitting the death penalty is implied in the Article limiting clause and its view, such strongly worded provision for the right to life outweighs the limitation clause”<sup>66</sup>.

The Court did not pronounce that death penalty was arbitrary under Article 4 because the applicants in *Rajabu & ORS V Tanzania* had restricted their application to the mandatory imposition of dead penalty. However, Justice Tchikaya in a separate opinion while dissenting, opined that the jurisprudence under international law has moved away from restrictive interpretation but that international human rights law had evolved towards an international prohibition against death sentence<sup>67</sup>.

He further opined that majority of African States have now abolished the death penalty or observed a moratorium on its use<sup>68</sup>.

Accordingly, 25 African Countries observe a moratorium on capital punishment either expressly or in practice (i.e. execution have been carried out within the past 10 years.) Algeria, Burkina Faso, Cameroon, Comoros, Democratic Republic of the Congo, Eritrea, Eswatini, Ethiopia, Equatorial Guinea, Gambia, Ghana, Keya, Lesotho, Liberia, Libya, Malawi, Mali, Mauritania, Uganda, Western Sahara and Zimbabwe<sup>69</sup>.

Among those Countries, Burkina Faso, Equatorial Guinea, Ghana have abolished the death penalty for ordinary crimes but capital punishment still exist for certain military offenses and extraordinary crimes. In times of war or for high treason<sup>70</sup>.

---

<sup>66</sup> *Rajabu & Ors V Tanzania (Merits and reparations)* (2019) 3 AFCLR 539

<sup>67</sup> *Rajabu and Others (Merit and reparation)* (2019) 3 AFCLR 534, Separate Opinion of Hon Justice Tchikaya (The deaths pending is not compatible with the requirement of international human rights law

<sup>68</sup> Cornel Center on the Death Penalty ><https://deathpenaltyworldwide.org> accessed on 2/2/2026

<sup>69</sup> *ibid* See also *Rutechura V. Tanzania (Judgment)* (2021) 5 AFCLR Separate opinion of Hon. Justice Tchikaya, 1 (International Human Rights Law, through its most advanced jurisprudence, has already derived from the prohibition of torture, cruel inhuman or degrading treatment or punishment [ ] the international prohibition of the death sentence. The question of the legal basis for prohibition no longer arises > World Coalition Against Death Penalty IN THE MATTER OF A REQUEST FOR AN ADVISORY OPINION ON THE COMPATIBILITY OF DETH PENALTY WITH THE AFRICAN CHARTER ON HUMAN AND PEOPLE RIGHTS AND OTHER HUMAN RIGHT INSTRUMENT APPLICABLE TO AFRICA made Under Article 4 of the protocol of the African Charter on Human and People’s Righton the African Charter on Human and People’s Right and Rule 68 of the African Court on Human and People’s Right february 2025

<sup>70</sup> *Ibid*

The six states in African that have retained death penalty in their laws and have carried out execution in the past ten years include Botswana, Egypt, Nigeria, Somalia, South Sudan and Sudan<sup>71</sup>. This reveals the attitude of African States toward capital punishment in the light of the steady and growing global affirmation for the protection of human rights. The need to urgently align with the global best practices by African States will not only enhance and promote human rights but also dignity of the human person.

However, given the content of the provision of Article 4 of the African Charter which expressly provides that every human being is entitled to respect for his life and the integrity of his person on the one hand. The said provision went further to allow the deprivation of a person right to life non arbitrarily. In other words, person's right can be deprived when it can be done non arbitrarily.

Having in mind the provision of Article 5 of the African Charter which provides safeguard to the dignity of human person; it can be asserted that there is no circumstances or condition that justifies the deprivation of a person life that will not contravene the dignity of the human person provided under Article 5. Implicitly, the allowance provided under Article 4 of the African Charter for the deprivation of human life (non-arbitrarily) is not tenable as it conflicts and contradicts the provision of the Rights to life which is also tied to the right to the dignity of human person. The right to life will make no sense if there is no right to dignity of human person.

**(iii) Universal Declaration of Human Rights**

Since the inception of the United Nation, it has been in the fore front of the protection and promotion of human right across the world. It is in the spirit of that the United Universal Declaration of Human Rights was birthed in 1948. Article 3 of the United Nation declaration on Human Rights provides: *'Everyone has the right to life, liberty and security of persons'*

---

<sup>71</sup> Ibid

Article 5 of the United Nations Declaration on Human Rights also score the point that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. Reckoning the history behind the formation of the United Nations and the need to protect the world from wars and genocide. The United Nation has been concerned with most elementary and obvious of all the rights, the rights to life.

The Universal Declaration of Human Rights adopted by the General Assembly in 1948 which is widely recognized and also domesticated by countries of the world as a standard instrument for human rights, affirms the right to life and the prohibition of torture and cruel, inhuman or degrading treatment or punishment<sup>72</sup>. Capital punishment as a means of punishment has been a subject of raging debate since the inception of the United Nation, but the General Assembly opted to remain silent on the subject matter at that time<sup>73</sup>

At the 1983 session, the General Assembly considered an agenda entitled “Human Rights and Scientific and Technological Development” expressed the view that “that there is nothing more important in the world today than the question of preservation of peace and ensuring the cardinal rights of every human being namely right to life is preserve and protected<sup>74</sup>. Since then the United Nations and other agencies alike have been at the front burner in trying to prohibit all forms of cruel and inhuman or degrading punishment (capital punishment) through treaties<sup>75</sup>.

There are about 110 states who abolished capital punishment in their domestic laws. These states are parties to one or more of the abolitionist treaties in addition to their obligation to promote human rights which is championed by the United Nations and other international organization.<sup>76</sup>. Also, it has been shown that about 60 states have not used death penalty for at least ten years even though it has been in their local legislation. Some of these states have ratified one of the abolition treaties ever though their national laws

---

<sup>72</sup> ‘The Death Penalty Project: International Law and Abolition of the Death Penalty’><https://deathpenaltyproject.org> accessed on 3/3/2026

<sup>73</sup> *ibid*

<sup>74</sup> *Ibid*

<sup>75</sup> ‘Human Rights and Scientific and Technological Development’> [www.refworld.org](http://www.refworld.org) accessed on 20/2/26

<sup>76</sup>(n<sup>72</sup>)

still allow for capital punishment. This evidently shows the commitment of such states in promoting human rights and the dignity of the human person<sup>77</sup>. Only about 30 states of the world still continue to use death penalty as a means of punishment. In fact, most of the states impose death penalty occasionally. The vast majority of execution are only done by four or five states<sup>78</sup>.

Nigeria has been a signatory to the Universal Declaration on Human Rights but have not domesticated the relevant provisions in accordance with the provision of the Constitution<sup>79</sup> to make it a binding law in Nigeria. Certainly, countries of the World are gradually coming to the terms of the need to enhance, promote and preserve right to life and the dignity of the human persons given reality of the limitation and the contradiction of capital punishment as practice by some states.

## **6.0 COMPARATIVE INSIGHT OF OTHER COUNTRIES APPROACH TO CAPITAL PUNISHMENT (U.K AND SOUTH AFRICA)**

The proponent of the school of thought that advance support for the continuous use of capital punishment as a means of punishment hinges their argument on the fact that capital punishment serves as a means of retribution. Those who killed should be killed because it served the end of justice by appeasing the families of the victims.

There are countries that have moved away from using capital punishment as a means of punishment and have embrace a pragmatic approach to solving the problem of crime thereby entrenching preserving the Right to life and dignity of human person which has transcribed beyond domestic legislation.

The United Kingdom is one of the Countries that has come to the reality that capital punishment is barbaric, uncivilized and violate the dignity of the right to life and the dignity of the human person and does not meet the ends of justice.

---

<sup>77</sup> Ibid

<sup>78</sup> Ibid

<sup>79</sup>See 12(1) CFRN, 1999 (As Amended)

Retrospectively, attempt to have the capital punishment abolished has met brick walls as early as 1929 even though as at that time the House of Common passed a resolution and set up a committee to examine the need to abolished capital punishment from the books<sup>80</sup> which recommendation was made that capital punishment be suspended for a trial period of five years but no action was taken<sup>81</sup>.The debate for the abolition capital punishment in UK was reopened by the Criminal Justice Act which led to the setting up of the Royal Commission on Capital punishment which eventually submitted its report in 1953.

Notwithstanding the noble recommendation of the Committee, the Conservative Government in 1955 announced that it would not accept any of the recommendations made by the Royal Commission. Every subsequent appeal and moves to reintroduce the argument via bill in the house of Parliament proved abortive<sup>82</sup>.

Nonetheless they are three executions that compelled the UK government to reconsider and revisit the need to abolish capital punishment in the Country.

The execution of Timothy Evans in 1950s, Derek Bentley in 1953, and Ruth Ellis in 1955. Each of this case raise different concerns, but taken together the case for the abolition of capital punishment<sup>83</sup>. We shall briefly consider the case of Timothy Evans.

*Timothy Evans was an illiterate lorry driver from South Wales. In 1947, he married Beryl Thorley and in 1948, the couple moved into top-floor flat 10 Rillington place, Notting Hill London. Their neighbors in the ground floor flat were John Christie, a post office clerk and former special constable and his wife, Ethel. Unknown to Evans, or anyone else, Christie was a necrophiliac serial killer who had already killed at least two women at the property prior to the Evan's arrival ( and who were buried*

---

<sup>80</sup> Juliana B. Knowles. 'The Abolition of the Death Penalty in the United Kingdom How it Happened and why it still matters'><https://www.deathpenaltyproject.org>

<sup>81</sup> ibid

<sup>82</sup> Ibid

<sup>83</sup> Ibid

*in the garden); Christie would go on to murder at least another three women as well as his wife over the next five years.*

*Timothy Berly's daughter Geraldine was born in October 1948. The following year, Berly became pregnant again. As the couple was struggling financially Beryl decided to have an abortion (which was illegal), and Evans reluctantly agreed. Learning of their plight and as a ruse in order to be able to sexually assault and murder Beryl, Christie offered to perform the abortion, relying on his (largely invented) first aid skill convince the young and gullible couple that he was qualified to do so. One day in November 1949, with Evans at work, Christie sexually assaulted and strangled Beryl and then raped her dead body. He then hid her body in the warehouse at the back of the house. When Evans returned from work, Christie told the learning-disabled lorry driver that Beryl had died during the abortion and that he should leave London because the police would assume that Evans had killed her. Christie told Evans the police would never suspect him because as a former special constable he was one of them. After Evans had gone home to South Wales (lying to his relatives about the reason for his sudden appearance alone) Christie murdered Geraldine and also put her body in the wash house. The reason Christie murdered the baby was undoubtedly his realization that the presence of the baby without her mother would be bound to attract attention sooner or later<sup>84</sup>*

*Evans was subsequently arrested and he confessed to murdering of his wife in reaction to the shock being told that his only daughter was also found murdered. At the trial, Evans recanted his confessional statement but it was too late in the day, as the evidence given by Christie at Evans' trial in 1950 condemned him. Consequently, Evans was sentence to dead and was subsequently executed at HMP Pentonville on 9<sup>th</sup> March 1950<sup>85</sup>*

---

<sup>84</sup> ibid

<sup>85</sup>ibid

*After some time as fate will have it, , a new tenant within the vicinity where Christie lived discovered the bodies of three women hidden in the kitchen next to the house where Beryl and Geraldine lived, and three other bodies were also found.*

In consequence thereof, Christie was arrested on 31<sup>st</sup> March 1953, and during the course of questioning, he confessed four times of killing Beryl Evan. Christie was tried for murdering his wife and found guilty. In view of Christie's crime, there was doubt as to Evan's guilt. Accordingly, a commission of inquiry was set up by the Home Secretary Sir David Maxwell Pype, to investigate the possibility of a miscarriage of justice. After much deliberation, the Commission of Inquiry submitted it to her. Thus, Parliament awarded an ex-gratia payment to Timothy Evans's half-sister as compensation for the miscarriage of justice. The resolution of the Parliament was corroborated by an independent assessor appointed for the Home Office. Lord Brennan QC accepted that the conviction of Timothy Evans for the murder of his wife and child was wrongful.<sup>86</sup>

The Criminal Case Review Commission further established the innocence of Timothy Evans. This was further reiterated by the High Court on 17<sup>th</sup> November 2007, where Stanley Burton J. said at para 35 of the judgment. 'I am happy to express my agreement with the conclusion that Timothy Evans has been exonerated of the murders of his wife and child....' This case is one among the notable cases that brought to fore a rethink on the viability of capital punishment in the light of errors that might lead to the conviction of an innocent person.

The murder (Abolition of death penalty) Act 1965 came into effect on the 6<sup>th</sup> November, 1965<sup>87</sup>. Thus, the death penalty in England and Wales was suspended for a period of five years. However, the death penalty was finally abolished in the United Kingdom in 1998 with the enactment of the Crime and Disorder Act 1998 and the Human Rights Act.<sup>88</sup>

---

<sup>86</sup> *ibid*

<sup>87</sup> The Act did not extend to Northern Ireland, except with regards to Court Martial S.36. The Death penalty in Northern Ireland was abolished in 1973 by the Northern Ireland (Emergency Provision Act 1973, S.1(1) >.

<sup>88</sup> *Ibid*

Several attempts have been made to reintroduce the death penalty in the UK has met a brick wall, especially with the Court of Appeal decision in 1998 with the conviction of *Mahmoud Mattan*<sup>89</sup> After 46 years of conviction and examination, new evidence was uncovered that indicated that Mattan had been innocent. Lending his voice further against the reintroduction of capital punishment during the 1944 debate, the Home Secretary of State, Michael Howard, explained that he had previously been in favor of reintroducing execution, but had changed his mind because he had come to realize that the system that he had previously regarded as infallible could make mistakes.<sup>90</sup>

The above revelation by the Home Secretary of State aptly captures one of the dangers of capital punishment in the light of the imperfect criminal justice system that is evident in every judicial system, subject to the hands of fallible men and a fallible judicial system.

Beyond the argument advanced in support of retribution advanced by the proponent of capital punishment, are the dangers of executing innocent men and women who fall victim to an imperfect judicial system that has failed to uncover their innocence.

South Africa is an African country that abolished the death penalty, which we can glean from. Hitherto, capital punishment was used during the colonial era in South Africa. During the apartheid era, the death penalty was employed extensively as a tool of political oppression and societal control. Capital punishment was utilised during the apartheid regime to settle political scores with Black South Africans. Between 1981 and 1990, an estimated 1,100 people were executed, with the last execution taking place in November 1989. The Truth and Reconciliation Commission uncovered that 95% of those sentenced to death during apartheid were Black, while all those executing the sentences were White. Capital punishment was abolished in South Africa in 1995 when the South African court in the case of *State V. T. Makwanyane and M. Mchunnu* held that capital punishment was incompatible with the prohibition against cruel, inhuman or degrading punishment with a human rights culture which made the right to life and dignity the

---

<sup>89</sup> RV Mattan (1998) ECWA Crim 676

<sup>90</sup> Ibid

cornerstone to the Constitution<sup>91</sup>. This became a landmark decision marked the formal abolition of capital punishment in South Africa in line with countries of the world that uphold international human rights standard. Namibia and Mozambique toed the line of South Africa by abolishing capital punishment in line with international human rights standards<sup>92</sup>.

Similarly, the European Union (EU) has reaffirmed its commitment in opposition to capital punishment as it violates the inalienable right to life and is incompatible with human dignity<sup>93</sup>. They further agreed that the death penalty is not an effective means of deterring crime and has made miscarriage of justice irreversible. Consequently, abolition of the death penalty is a condition precedent for membership of the European Union and the absolute ban on the death penalty under all circumstances is inscribed in the Charter of fundamental Right of the European Union<sup>94</sup>.

Thusly, the United Kingdom and South Africa's experience as fore discussed, has questioned the integrity and viability of capital punishment as a means of attaining justice. Accordingly, Nigeria must have a rethink on its continuous application of capital punishment in the light of its defective and compromised criminal justice system.

## **7.0 RETHINKING THE JURISPRUDENCE OF RETRIBUTION IN CAPITAL PUNISHMENT IN NIGERIA**

The retributive theory of punishment hinges on three dogmas. First, retribution as repayment, i.e. the need for the criminal to repay his debt to society. This punishment is inflicted to make the offender pay for his offence<sup>95</sup>. Secondly, that retributive punishment

---

<sup>91</sup> Ibid

<sup>92</sup> See n<sup>91</sup>

<sup>93</sup> E.U. Statement on the Death Penalty, 'The E.U made this Statement in their meeting of the Committee of Members held on the 8th July 2020' >[www.eeas.europa.eu/eeas/eu-statement-death-penalty](http://www.eeas.europa.eu/eeas/eu-statement-death-penalty) accessed on 28/2/2026

<sup>94</sup> Ibid

<sup>95</sup> John Cottingham, 'Varieties of Retribution'. *The Philosophy quarterly* (July, 1979) 129 (116). 238-240

is met because the offender deserved it<sup>96</sup>. This theory justifies the rightness of punishment that the offender deserves. Thirdly, Kant asserts that the reason why punishment is imposed must always be because the individual on whom it is inflicted has committed a crime<sup>97</sup>.

One of the strongest views of the retributive theory is that it brings to an end the crime itself. Thus, laying premium on vengeance and revenge providing solace to the victim's family who have suffered out of the action of the offender thereby dissuading them from reprisals on the offender or members of his family<sup>98</sup>

As beautiful as the foregoing arguments represent, the retributive theory of punishment does not serve the end of justice. As aptly defined by Justice Oputa JSC in *Josiah V State*<sup>99</sup> that:

*Justice is not a one way- way traffic. It is not justice to the appellant only.*

*Justice is not even only a two – way traffic.*

*It is really three way traffic, Justice for the appellant accused of a crime of a heinous of crime of murder*

*Justice for the victim, the murdered man, the deceased, whose blood is crying out to heaven for vengeance, and finally justice for society at large-the society whose social norms and values had been desecrated and broken by the criminal act complained of*

Bearing in mind the description of justice as propounded by Justice Oputa JSC, it is submitted that punishment must be met with a view of attaining justice to all the parties.

---

<sup>96</sup> Golding M.P, *Philosophy of Law* (Englewood Cliffs, 1976) 81.

<sup>97</sup> John Cottingham n<sup>97</sup>

<sup>98</sup> Vaibhau Goel, 'Capital punishment: A Human Right Examination case study and Jurisprudence International NGO Journals (2008) (3) (9)> [www.academicjournals.org](http://www.academicjournals.org) accessed on 28/2/2026

<sup>99</sup> 1985 1 NWLR Pt 125

However, the retributive theory in capital punishment is narrow-minded and strictly applied with a view to satisfying the vengeance thirst of the victim's family, having little or no regards to the offender and society at large.

This theory fails to consider the fact that those who commit crimes in society are not free agents but to some extent at the mercy of environmental factors. Punishment should not only serve as an emotional release for society but should help the individual<sup>100</sup>.

While commenting on the relationship between crime and society, Professor I.I. Gabriel submitted that:

*The social phenomenon known as crime does not exist independent of human society since it is people who commit crime. Therefore, an objective assessment of the causes and cures of crime in Nigerian society is based on the social scientific foundation of the interrelationship between crime and society. What we are saying in a nutshell is that crime is the product of given socio-economic system and can only be eliminated when this is realized and solution based on this framework<sup>101</sup>*

A dysfunctional society breeds deviants and violent criminals. A society whose youth are turning to crime in their thousand needs to pause for a moment and ask itself what is wrong. My recent observation in the Plateau State High Court leaves a bitter taste in the mouth. Young people between Ages of 15 – 18 years constitute more than 80 percent of those arraigned before the Court for the offenses of Arm robbery, kidnapping, Murder, and banditry daily. This call to question the need to review the system of punishment. A society whose young teenager are eagerly engaging in arm robbery, kidnapping and various crimes needs to take a second look at itself. Or does it follow the Biblical truth that the '*fathers have eaten sour grapes and children, teeth are set on edge*<sup>102</sup>' readily comes to mind.

---

<sup>100</sup> Joel Meyer, 'Reflection Some Theories of Punishment' *Criml Criminology and Police science* (1968)(59)

<sup>101</sup> Dr. I.I Gabriel in *Province of Legal Method* by Maxwell M.Gidado and Sylvester(2003 Mono Expression LTD Zaria Road Jos)79

<sup>102</sup> Ezekiel 18:2

The provision of chapter II of the 1999 Constitution of the Federal Republic of Nigeria (as amended) expressly provides for the fundamental objective and directive principle of the Nigerian State. Simply put, the State has political, economic, social, educational, foreign and environmental objectives which it must drive for the betterment of the Nigerian people. For Instance, section 18(1) of the Constitution provides that:

*Government shall direct its policy towards  
ensuring that there are equal and adequate  
educational opportunities at all level*

3. *Government shall strive to eradicate illiteracy,  
and to this end Governments shall as and when  
practicable provide-*
  - a. *Free, compulsory and universal primary education*
  - b. *Free secondary education*
  - c. *Free university; education; and*
  - d. *Free adult literacy programme.*

The State is also expected pursuant to the provision of the Constitution to provide shelter, food and security, minimum living wage, employment, healthcare to all its citizen etc<sup>103</sup>.

There seem to be a great chasm between appearance and reality in the state in Nigeria. The failure of the State to arise in its responsibility in providing conducive environment that will douse and minimize or eradicate crime is responsible for the manifest increase of crime in Nigeria. There is a correlation between the high rate of unemployment and illiteracy and the manifest increase in kidnapping, banditry, armed robbery and cybercrime and other forms of crime in Nigeria. Whereas the Nigerian State having abdicated in its constitutional responsibility to stalling crime has now devised a means of killing the victims of crimes who are product of a dysfunctional society. The story of Henry Chibueze (aka vampire) who became a kingpin criminal and terror in the South East and South South Nigeria fortifies our submission.

---

<sup>103</sup> Section 16 of the Constitution of the Federal Republic of Nigeria. 1999 (As Amended)

*Born 36 years ago to the family of Chibueze in Nwangele Local Government Area of Imo State, Vampire was orphaned at the age of seven. He took to crime at 11, after he dropped out of school... Henry said he took to crime after his older brother sent him out of the house when he could no longer pay his school fees. ... In his confession to DSS, Vampire said: I started kidnapping five years ago and I joined the business because my people did not train me...<sup>104</sup>*

Without prejudice to the authenticity of the above statement, one can submit that the society that fails to provide Henry (Vampire) with the necessary environment to attend school and train him when he needed direction, and mentorship is the same society that got up to defend itself from the criminal acts of Vampire. This is the hypocrisy of the Nigerian society, the irony is that the society breeds criminals, nurtures them to maturity and make public spectacle of them by cruelly terminating their lives.

The truth is that we do not need to kill criminals to protect the society, unless we are looking for a way out which capital punishment seems to be the easy way out but it does not solve the problem of crime ;while it terminates the life of a convicted person, capital punishment harms the entire society in many ways since violence beget violence!

There has been a unanimity as to the sacredness of human rights. Human rights are rights which are not privileges in the sense that could be withdrawn at the whims and caprices of the government of the day. They are rights which all arms of government are covenanted to protect<sup>105</sup>. Human rights predates government as such government is expected to protect and preserve human rights. The Universal Declaration of Human rights refers to Human rights as

---

<sup>104</sup> `Vampire King of the Under World`><https://thenationonline.net> accessed on 2/3/2026

<sup>105</sup> J. Nnamdi, Aduba, *An Introduction to Human Rights Law in Nigeria* (Innovation communications, Lagos 2016)

“inherent rights”. By this, it means right that is permanent, natural and inseparable which should be treated with dignity and integrity.

The African Charter on people and Human Right<sup>106</sup> and International Convention on Civil Rights qualified<sup>107</sup> right to life as “inviolable” which contemplates sacred, untouchable and absolute rights accrue to Human beings. The preceding provision aligns with the purpose and intent of the provision of Section 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria, 1999(as amended).

Arising from the foregoing, it can be said that careful exploration of the above provisions of the law establishes that there is a conflict between the right to life, the dignity of human person and retribution as a means of punishment in capital offenses what seeks to deprived Human being their right to life. The Constitution of the Federal Republic of Nigeria, International Instrument like the Africa Charter on People and Human Right, Universal Declaration of Human Right, and International Convention Against Torture and Other Cruel and Inhuman Treatment among others cannot guarantee the right to life and dignity of human person and turn around to appropriate the derogation of such rights. There is no circumstances that justifies for the derogation of Human Rights that will not conflict with dignity of human person.

Since the State is not the author of human life, does it have any moral justification to take human life under any circumstances? The retributive theory that justifies capital punishment hinges its argument on the fact that the offender needs to be paid in the same coin; having terminated the right to life of the deceased. This argument sounds appealing and apparently seems to serve the end of justices. But a clinical audit, finds the said argument defective. How does it serve the interest of justice to the State ,the offender and the deceased when the offender is paid in his own coin by only taking his life? For instance, what is the justice in a case where a University Professor, who made significant contributions in the field of sciences which benefited the society was murdered by an illiterate individual who turned armed robber? Does the taking of the Life of this armed robber who has been a menace to the society serve the end of justice? Does the value of the Professor’s life be compared to that of the armed robber who snuff life out

---

<sup>106</sup> Article 3 of the Universal Declaration on Human Rights

<sup>107</sup> Article 4 ibid

of the Professor? Retribution does not serve the end of justice just by only taking the life of the arm robber who killed the University Professor.

The retributive theory is restrictive in its application as the offender is only made to pay for taking the life of the deceased without more just to appeased the family of decease who largely bear the brunt of his death. This theory does not contemplate compensating the family of the victims who are made to suffer from the heinous act of the offender.

Capital punishment will have been perfect way of punishing an offender if our criminal justice is perfect and devoid of limitations. It is notorious that the chief method of investigation by the Nigerian Police in criminal cases is the use of confessional statement. The confessional statement of an accused person is the easiest ubiquitous evidence that the Nigerian Police provides in criminal trial in Nigeria<sup>108</sup>.The Nigerian police by their statutory function is saddled with the responsibility of carrying out investigation and prosecution. However, the Nigerian police cannot conduct proper investigation as they rely on torture to elicit confession from suspect<sup>109</sup>

While recounting their experience, some former detainees report reveals that some detainees have been bound and suspended midair, in painful positions while being beaten with machete, gun butts, boots, fits, electrical wires, animal hides and other instruments. This is as a result of the absence of forensic evidence for proper investigation, hence the Police <sup>110</sup> resort to obtaining confessional statement as the major means of investigation; it is the confessional statement obtained in the course of investigation that is used to prosecute the accused person during trial.

Given the above reality of the Nigerian criminal justice system, capital punishment is a dangerous path to thread as innocent lives can be lost owing to the deficiency of the system. The case of Timothy Evan in the U.K. and the *South Africa case of State V.T. Makwanyane and M. Mchunu* exposes the inherent danger of capital punishment upon execution as the execution of innocent persons which cannot be reversed.

In Contrast, the E.U. countries have a near perfect judicial system better than Nigeria, but they have come to terms with the reality that capital punishment is not only inherently incompatible to

---

<sup>108</sup> S. Akinbiyi, *Criminal Procedure and Trials in Nigeria* (2<sup>nd</sup> Edition Ascend Publication Ltd, 1999)

<sup>109</sup> Network on Police Reform in Nigeria and Open Society Justice Initiative Criminal Force Torture, Abuse and Extrajudicial

<sup>110</sup> Osgba Sylvesters, Monday Adeyi, 'The Use of Forensic Evidence in Criminal Investigation' (A study of the Nigerian Police) *International Journal of Humanities and Social Research*(2009)(15)(2)91

the right to life and the dignity of human person, but that their defect in the judicial system can lead to the execution of innocent person.

Ironically, the Nigeria Governors have refused to sign death warrant for inmates who have been sentenced to death points to the fact that capital punishment is not the way to go in Nigeria, as the last execution in Nigeria occurred in 2016 in Edo State<sup>111</sup>. According to the Nigerian Correctional service, the refusal of State Governors to sign warrant is placing strains on the resources of the Nigerian correctional service.

Accordingly, the number of condemned inmates continued to grow, exacerbating the challenges of overcrowding in correctional facilities. The inevitable long wait that the condemned inmates are made to wait not knowing when their execution is going to be is a harrowing experience that is degrading and inhuman which is incompatible to the provision of the Constitution and International Charter that seeks to promote human rights .

The attitude of the State governors refusing to sign warrant of execution conjures the fact that capital punishment is outlandish and uncivilized method of punishment which ought not to be in our statute books.

## **8.0 CONCLUSION**

There is no doubt from the above discourse that human life is costly, precious and it must be protected by all and sundry. Since the state is not the author of human life, the State must not be permitted to take it under whatever circumstance. The forfeiture of life is too absolute, too irreversible for the state to impose it on any person under the guise of retribution.

With defect in the Nigerian Criminal justice system and the incompatibility of the right to life and the dignity of human person with capital punishment; there is a need to overhaul the Nigerian Criminal Justice System with a view to absolutely preserving and protecting the right to life and the dignity of human person. Consequently, the following recommendations are proffered:

---

<sup>111</sup> Gift Habib, 'Governors refusal to Sign death warrants draining NCOS resources' –official ><https://punchng.com> accessed on 3/3/26

- i. The Constitution of the Federal Republic of Nigeria 1999 (As Amended) and other relevant penal legislation should be amended to remove capital punishment and make the right to life unqualified as provided under the South African Constitution.
- ii. The social and economic imbalance in the society should be redress. Accordingly, Chapter II of the Constitution should be amended and made justiciable as this will make the state to rise in the responsibility to address the issue of crime in the society.
- iii. The essence of capital punishment should not be to terminate the life of the offender, but that the offender should be made to suffer for his crime while he lives. He should be made to suffer and pay back to the family of the victim of his offence.