ADMINISTRATION OF THE DEATH PENALTY IN THE CRIMINAL JUSTICE SYSTEM IN GOMBE STATE: AN APPRAISAL

BY

AHMAD Abubakar
LLM/LAW/13545/2010-2011

A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATES STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER DEGREE IN LAW

DEPARTMENT OF ISLAMIC LAW,
FACULTY OF LAW,
AHMADU BELLO UNIVERSITY,
ZARIA

SUPERVISORY COMMITTEE

Professor M. B. Uthman - First supervisor

Dr. M. K Danladi - Second supervisor

2010-2011

DECLERATION

I declare that this dissertation titled "ADMINISTRATION OF THE DEATH PENALTY IN THE CRIMINAL JUSTICE SYSTEM IN GOMBE STATE: AN APPRAISAL" Has been carried out by me in the Department of Islamic Law, Ahmadu Bello University, Zaria. The information derived from the literature has been duly acknowledged and the texts and list of references provided. No part of this dissertation was previously presented for another Degree or Diploma at this or any other institution.

Abubakar AHMAD

……

LLM/LAW/13545/2010/2011 **Date 15th April 2016**

CERTIFICATION

This Dissertation entitled " **ADMINISTRATION OF THE DEATH PENALTY IN THE CRIMINAL JUSTICE SYSTEM IN GOMBE STATE: AN APPRAISAL"** by Abubakar AHMAD meets the regulations governing the award of the degree of Master of Laws - LL.M of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

_____	_____
Prof. M. B. Uthman	Date
Chairman, Supervisory Committee	
_____	_____
Dr. K. M. Danladi	Date
Member, Supervisory Committee	
_____	_____
Prof. Sani Idris	Date
Head, Department of Islamic Law	
_____	_____
Professor S. Z. Abubakar	Date
Dean, School of Postgraduate Studies	

DEDICATION

I dedicate this thesis to Allah (swt) for the bounties of mercy he bestows on me; to my late Dad Alhaji Alkali Ahmadu Daba, to my late Mother Hajiya Fatimah M. Ibrahim and my brother M.K Ahmad and to all those who in one way or the other contributed in seeing me through my education to this level.

ACKNOWLEDMENTS

First of all I want to thank my major Supervisor Prof. M. B. Uthman who supervised me throughout this journey despite his tight schedules; I want to thank him for his patience, endurance, tolerance and hospitality. My thanks also go to my second supervisor Dr. K.M. Danladi who also supervised this dissertation. I would like to express my deep sense of appreciation and gratitude for their guidance and encouragement towards the completion of this dissertation. I want to acknowledge and appreciate the full support rendered to me both morally and financially by my senior brother Alhaji Muhammad Kabir Ahmad in completing this LL.M program

I want to thank the Dean Faculty of Law Dr Madaki, the HOD Islamic law, Prof. Y. Y. Bambale, Prof Yusuf Aboki; Prof Bala Babaji, Professor Muhammad Arsilan, Justice S.Y Suleiman and Dr. (Mrs.) F.I. Akande, Mrs. F. Kera for their inspiration and help toward the success of this dissertation. Same indebtedness also goes to my internal supervisor Prof. Aminu Gurin for the knowledge he impacted on me in the course of my studies. My sincere thanks and appreciation also go to all the staff of the Faculty of Law and the Dean's Office, especially Mrs. Lar. Also I want to thank my wives Zainab Ahmad and Sadiya Hasan for standing by my side throughout the way, I thank all my kids and my friend His worship Muhammad Sambo Umar for initiating, supporting and encouraging me to undergo this program, I thank Bello Abdullahi for his valuable contributions towards completing this work. Finally my thanks goes to everybody who directly or indirectly assisted me in this research, may ALLAH bless you all.

TABLE OF ABBREVIATIONS

ACJA	Administration of Criminal Justice Act 2015
A.C:	English Appeal Cases
ALL E.R:	All England Law Reports
CJ	Chief Judge
K.B:	Kings Bench
L.L.R:	Lagos Law Report
LFN	Laws of the Federation of Nigeria
NLR:	Nigerian Law Report
NWLR:	Nigerian Weekly Law Report
SAW	Sallallahu Alaihi Wasallam (peace be upon him)
SCNJ	Supreme Court of Nigeria Judgment
W.A.C.A:	West African Court of Appeal
W.L.R:	Weekly Law Report.
P.A	Prison Act
NPN	Nigerian Prison Service
E..Act	Evidence Act.

LIST OF STATUTES

FEDERAL LAWS

Administration of Criminal Justice Act 2015

Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011)

Criminel Code, Cap. C, LFN 2004

Criminal Procedure Act, Cap C.38, Laws of Federation of Nigeria 2004

Criminal Procedure Code, Cap. C41, LFN 2004

Penal Code, Cap. P14, LFN 2004

Penal Code Law, 1959 (Commencement) Notice 1960, N.R.L.N. 96 of 1960

Nigerian Prison Act, Cap P29 Laws of the Federation of Nigeria 2004

Decree No 9 of 1972

STATE LAWS

Zamfara State Magistrate Courts (Restriction of Powers) Law 2002

The Sharia Penal Code Law of Zamfara State, No. 10 of 2000

Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, 1999 of Zamfara State

LIST OF CASES

Adeniji vs. State, (1998) 14 NWLR 584

Ojisua vs. Aiyebelehin (2001) 11 NWLR (Pt 723) p. 44 at 53

Ndidi vs. State (2007) 3 NWLR (pt 1043) 633 SC

Bello vs. State (2007) 10 NWLR (pt 1020) 94 CA

*R. vs. Bangaza***,** (1957) 5 FSC 1

Madupe vs. State, (1988) 4 NWLR (pt 87) 9 SC

Nasiru Bello vs. Oyo State (1986) 5 NWLR (pt 45) p. 828

Madipe vs. State (1988) 4 NWLR (PT 87) 130 SC

Muhammed Garuba & Ors vs. Attorney General of Lagos State (Unreported) Suit No. ID/559M/90 High Court of Lagos, Ikeja Judicial Division.

Okoro vs. State (2000) 49 NWLR 356

Kalu vs. State, (1998) 13 NWLR 537; (1998) 12 SCNJ 1

Ajulu & Ors. Vs Attorney General of Lagos State, (unreported), Federal High Court Lagos, September 2012

Okeke vs. State (1999) 2 NWLR (pt. 590) 246 at p. 273

Abgede vs. State (1996) 5 NWLR (pt 448) 270 at p. 276

Abdullahi Umar vs. the State (2014) LPELR, 23-190 (SC)

Onah vs. the State (1985) 2 NWLR (pt 12) 236.

Bello Abubakar vs. the State (2014) LPELR 23-199 (CA)

Makwanyane & Anr v. the State 16 HRLJ 154

ABSTRACT

*The main aims and objectives of this desertion titled; " **ADMINISTRATION OF THE DEATH PENALTY IN THE CRIMINAL JUSTICE SYSTEM IN GOMBE STATE: AN APPRAISAL** is to appraise, evaluate, estimate and review the level of efficacy of the application of the Death Penalty in Nigeria, whether the retention of this Penalty in our Criminal Justice System is effective or not? Presently the international community is moving towards total abolition of the Death Penalty for all crimes, the United Nations Resolution No 62/149 and 63/168 calling for moratorium of the use of the Death Penalty has been ratified by the Nigerian Government but is yet to be domesticated into its laws. Prisons records as at 10th November 2015 shows that Nigeria has about 1,669.00 convicts on Death Row cells, many of them have been convicted for more than 10 years. The legal technicalities involved coupled with the refusal of many State Governors to sign death warrants has made it difficult if not impossible to carry executions, therefore many death row inmates live in constant fear and agony for many years and serving a separate term of punishment not initially part of their original sentence. Prison records also shows [1]from year 2000 to 2015 death row inmates rose from 435 in year 2000 to 1,669 inmates in December 2014, almost 383.6% increase, during this 15 years only 12 executions were carried on. Nigerian prisons cannot coup with this increase due to lack of adequate facilities to keep this inmates. Therefore this thesis aims at evaluating these problems and recommend solutions to it.*

The thesis is divided into five chapters, the first chapter contains the main introduction, the reasons behind embarking on this research such as aims and objectives, justification, methodology, literature review, the scope of the research is focusing on Gombe State as a case study, with references to other North East States in order to get an accurate result that can be applicable to other states of the Federation.. The second chapter contain the concept of Criminal Justice System and its dimensions this include an overview of the legal frame work for the Criminal Justice System appraising the penalty under the Military regime, the Penal Code, the Criminal Procedure Code, The Criminal Procedure Act, the Sharia Penal Laws, the offences that attracts death penalty in Nigerian. Methods of execution and the role of other organs like Police, Attorney General, Prisons who are responsible for the administration of Criminal Justice System. In chapter 3 the researcher discussed the argument for or against the death penalty, presenting both arguments and Nigerian concern over the penalty and finally the general assessment of the two arguments. Chapter 4 is the empirical aspect of the thesis, where the researcher conducted a field research by visiting prisons, distributing questionnaires, conducting face to face interviews with the stake holders in the Administration of Criminal justice System in Nigeria to get real facts on the ground which can give accurate information on the application of death penalty.

Finally, chapter V contains the summary, observation and recommendation. The findings indicated that most of those who participated in the study are in favor of the application of Death Penalty. The finding also showed that Nigerian prisons are not fit to serve as rehabilitations centers, most if not all our prisons were built around 1960 or thereabout with little or no facilities to serves as prisons, also the findings revealed that inmates lives in constant fear of Death every day while awaiting their execution. in the opinion of human

[1] See table (1) and ((2) of Chapter 4 of this research.

right actives that constant fear amount to mental torture, (anticipation of Death is worse than Death itself) the findings also indicated that many death row inmates favored the idea of introducing the concept paying blood money (Diya) than face death penalty (which is natural) all this and many other findings are contained in chapter five.

Finally the research recommended the retention of the application of Death Penalty in Nigeria, restructuring the Criminal Justice System, rehabilitate the Nigerian prisons, Government should facilitate speedy trials for capital offenders, and where possible introduce the concept of "Diyah" to save the life of the convict as "Diya" will also allow the victim's family to gets some compensations (financial benefits). Finally it is recommended that the Supreme Court must confirmed all the death sentences before execution can be carried on, this will go long way in reducing the miscarriage of justice, the fear, the mental torture this inmates are experiencing in prison for years.

TABLE OF CONTENTS

Title Page - - - - - - - - - - I

Declaration - - - - - - - - - - ii

Certification - - - - - - - - - - iii

Dedication - - - - - - - - - - IV

Acknowledgment - - - - - - - - - v

Abstract - - - - - - - - - - VI

List of Abbreviations - - - - - - - - - vii

List of Statutes - - - - - - - - - viii-

List of Cases - - - - - - - - - ix

Table of Contents - - - - - - - - - xii

CHAPTER ONE

GENERAL INTRODUCTION

1.1 General Introduction - - - - - - - 1

1.2 Statement of the Research Problem - - - - - - 6

1.3 Aim and Objectives of the Research - - - - - - 10

1.4 Scope of the Research - - - - - - - 10

1.5 Significance of the Research - - - - - - - 11

1.6 Research Methodology - - - - - - - - 11

1.7 Literature Review - - - - - - - - 12

1.8 Organizational Layout - - - - - - - - 13

CHAPTER TWO

THE CONCEPT OF CRIMINAL JUSTICE AND ITS DIMENSIONS

2.1 Introduction - - - - - - - - 33

2.2 An overview of the legal frame of Criminal Justice System in Nigeria - 34

2.3. Death Penalty under Military Regime - - - - - 36

2.4 Death Penalty under the Criminal Administration of Criminal Justice Act 2015- 36-38

2.5 Death Penalty under the Penal Code and Criminal Procedure Code of the North -38-42

2.6 Death Penalty under the Criminal Code and the Criminal Procedure Act of the South ----

- - - - - - - - - - - 42-44

2.7 The Sharia based penal Laws - - - - - - 44 -49

2.7.1 Adultery or Zina - - - - - - - - 49 -50

2.7.2 Homosexuality (Liwat) - - - - - - - 50

2.7.3 Robbery (Hiraba) -- - - - - - - 51

2.7.4 Apostasy (Ridda) - - - - - - - 51

2.7.5 Murder (Qatal) - - - - - - - - 52

2.8 Offences that attract death penalty under the Nigerian Criminal Law - - 53

2.8.1 Treason - - - - - - - - - 53

2.8.2 Armed Robbery - - - - - - - - 53

2.8.3 Instigating invasion of Nigeria - - - - - - 54

2.8.4 Giving false evidence leading to execution of innocent person - 54

2.8.5 Treachery - - - - - - - - 54

2.9 Methods used in executing convict in Nigeria - - - - - 57

2.9.1 Beheading - - - - - - - - 57

2.9.2 Electric chair - - - - - - - - 59

2.9.3 Gas chamber - - - - - - - - 59

2.10 Major Organs responsible with the Administration of Criminal Justice System in Nigeria - - - - - - - - - 59

2.10.1 The Courts - - - - - - - - 60

2.10.2 The Nigerian Police - - - - - - - 62

2.10.3 The Attorney General - - - - - - - 63

2.10.4 Nigerian prisons - - - - - - - - 64

2.10.5 The Nigerian Bar Association - - - - - - 67

A) The Legal Aid Council - - - - - - - - 68

B) Human Right Commission - - - - - - - - 68

CHAPTER THREE

ARGUMENT FOR AND ANGAINST THE APPLICATION OF DEATH PENALTY IN NIGERIA

3.1 Introduction - - - - - - - - - 69

3.2 The origin of the movement for the abolition of death penalty - - - 70

3.3 Nigerian concern over the abolition of death penalty - - - - 77

3.3.1 Argument of the proponents of death penalty - - - - 79

3.3.2 Argument of the opponents of death penalty - - - - - 83

3.4 An assessment of the two arguments for and against the application of death penalty - - - - - - - - - - - 87

CHAPTER FOUR

4.1 Introduction - - - - - - - - 93

4.2 Method of data collection and analysis - - - - - 95

4.3 Summary of condemned convicts in Nigerian prison from year 2000 to Dec 2015 - 86

4.5 Data analysis - - - - - - - - - 101

4.6 Data analysis related to Judges, Lawyers and officers in the Administration of Criminal Justice System -- - - - - - - - 113

4.5 Conclusion - - - - - - - - - 122

CHAPTER FIVE

5.1 introduction - - - - - - - - 123

5.2 Summary -- - - - - - - - 123

5.3 Findings - - - - - - - - - 124

5.4 Recommendations - - - - - - - - 128 -132

Bibliography - - - - - - - - - 134

Article - - - - - - - - - 136

Report - - - - - - - - - 137

Appendix - - - - - -- - - 138

CHAPTER ONE

GENERAL INTRODUCTION

1.1 GENERAL INTRODUCTION

Section 402 (2) of the Administration of Criminal Justice Act 2015[2] reads as follows; "***the Sentence of the court upon is that you be hanged by the neck until you are dead or by lethal injection*.**" similarly Section 273 of the Criminal Procedure Code and Section 367 of the Criminal Procedure Act[3] have provided for the Death Penalty for capital offences.[4] The Nigerian Constitution in Section 33 (1) provides,[5] "*every person has the right to life, and no person shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of criminal offences of which he has been found guilty in Nigeria*" by implication the Nigerian Construction do recognizes the application of death penalty and where the offence is proved beyond reasonable doubt as required by the evidence Act, the courts have only two options, either to impose the Death Penalty or life sentence [6] In many State Judiciaries in Nigeria, death sentences passed on convicts over the years have not been carried out, many convicts are still in prisons waiting for the hang man to knock on their cells and if this is the case, what is the essence of passing a sentence that cannot be executed, thus raising the issue of efficacy of maintaining the Death Penalty in our laws? Recently, the application of the Death Penalty in the world has generated a lot of debate, especially at the international level. The proponents and opponents of its application have made the topic very interesting in the sense that up to date, this debate has not been laid to rest.

---

[2] Cap C 40 LFN2015

[3] CapC38 Laws of the Federation of Nigeria 2004

[4] Section 273 provides: - "*when a person is sentenced to death, the sentence shall direct that, he be hanged by the neck till he is dead". Also, section 376(2) of the Criminal Procedure Act provides: "the sentence of the court upon you, is that you be hanged by the neck until you be dead and may the Lord have mercy upon your soul"*.

[5] Constitution of the Federal Republic of Nigeria,(1999) 1999 (AS AMENDED IN 2011) Cap C23,LFN (2004)

[6] Section 222 & 224 of the Penal Code and Section 367 of the Criminal Code

The debate over the removal of the Death Penalty from the Nigerian Criminal Justice System rages between abolitionists and receptionists. In 2007 and 2008, the United Nations General Assembly adopted Resolution 62/149 and 63/168 calling for moratorium of the use of the Death Penalty. Nigeria as a country is a member in the United Nations, it is duty bound to respect its obligation especially when it signs and ratifies any convention. Nigeria may not wish to be left behind, as such there is a need to consider the application of the Death Penalty from Nigerian perspectives to see whether it is still relevant, effective and serving its purpose or not.

While the international community is moving toward total abolition of the application of the Death Penalty for all kind of offences, Nigerian domestic laws duly recognized the Death Penalty. Thus, in **Adeniji vs. State,**[7] the court has stated that: *"the Death Penalty is constitutional.*" Similarly, the Court of Appeal has held that: "*The Death Penalty as per Sections 33(1), 233(2), 243 of the Constitution is expressly recognized by the Nigerian Constitution*". Also, the Supreme Court in **Okoro vs. State**[8] and **Kalu vs. State**,[9] the Nigerian courts have stated that **"***the Death Penalty and its method of execution is lawful and valid as same is sanctioned by both Sections 33(1) and 34(1)(a) of the 1999 Constitution.*"

Clearly, there is a contradiction between the Nigerian domestic laws and Nigeria's International obligation to comply with the above resolution. The Nigerian Constitution is the supreme law of the land, and any law that is inconsistent with its provision is null and void.[10] Now how can Nigeria reconcile between its domestic law and its International obligations? On

[7] (1998) 14 NWLR 584
[8] (2000) 49 NWLR 356
[9] (1998) 13 NWLR 537; (1998) 12 SCNJ 1
[10] Section 1(3) Constitution of the Federal Republic of Nigeria 1999 as amended in 2011, Cap. C23, LFN (2004)

the issue of death penalty, the world today is divided into two camps; the retentionist[11] and abolitionist. every group being aided by reasons to support its side of the debate.

Following the above background, several legal issues are at the forefront on the debate towards the application of Death Penalty in Nigeria. The first issue is, should Nigeria join the band wagon and remove the Death Penalty from its laws? Presently out of 192 countries in this world, 117 countries[12] have ***defacto*** **or** ***dejure*** abolished the Death Penalty. Secondly, many convicts are languishing in prison waiting for execution.

Likewise, as human life is so sacred and important that it must be preserved and protected in order to maintain the existence of mankind. It is thus the duty of the government or authorities to protect and preserve it and that life should not be taken away without due process of the law. In this respect, the Nigerian Constitution provides:

> Every person has the right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of court in respect of a criminal offence of which he has been found guilty in Nigeria.[13]

The above section of the Constitution has in clear and unambiguous terms guaranteed every Nigerian the right to life, such right should not be taken away except by order of a competent court in respect of a criminal offence committed inside Nigeria. On the other hand, the section has made it clear that no one has the right to take someone else life without following due process of law. Thus, a careful analysis of section 33(1) is that, there must be two conditions

---

[11] For example, Egypt on 2nd February 2015, the Egyptian Supreme Court confirmed the death sentence of 183 prisoners. The men were convicted for playing a role in killing police officers in Kaduna in August 2013 during upheaval that followed Army toppling President Muhammad Mursi. Human Rights Watch said: "mass death sentence is fast losing the Egyptian Judiciary whatever reputation for independence it had." Sara Leah Winston, their spokeswoman said: "instead of weighing the evidence against each person, judges are convicting defendants in mass without regards to fair trial standard," Punch Newspaper, vol. 2266, dated 2 February 2015.

[12] Amnesty International Report on Death Penalty, 2015.

[13] Constitution of the Federal Republic of Nigeria,(1999) 1999 (AS AMENDED IN 2011) Cap C23,LFN (2004

before Death Penalty can apply: the judgment must have been passed by a competent court of law in respect of a criminal offence and secondly the offence must have been committed in Nigeria. in view of this, one can comfortably state that Death Penalty is part of Nigerian laws and the objective of this section is to protect the lives of Nigerian citizens. It is thus the duty of the state to provide its citizens with security of life.

However, one of the important aspects in the debate on the abolition of Death Penalty in Nigeria is, its implications in undermining the implementation of Sharia in Nigeria technically .The point is that, as far as Nigerian Muslims are concerned, removing the Death Penalty in Nigeria is not practically possible because of the large population of Muslims, the Death Penalty is part of the Islamic Law, in that, a mere legislative Act, by either the Federal or the State House of Assembly cannot abrogate the sharia as contained in the *Quran* and *Sunnah*. Therefore, the raging debate is that Death Penalty is part and parcel of Sharia; and by any token, the sharia is part of the body of Nigerian legal system that must be reckoned with especially in matters that affects the religious rights of Muslims in Nigeria.

A lot has been written about the position of Shari'a on the subject matter, many books, were written on the topic, one of these books is written by Sheikh Imam Abu Zahara [14] he tried to explain the major differences between shari`a and the common laws, the shari'a laws are sets based on the equality of the ruler and the ruled, whereas the common laws are made by the rulers to regulate the activates of their society and also to protect their interest see for example section 174(1) and 211[15] gives the Attorney General of the federation or State the power to enter ***Nolle prosque***, i.e. stop any case before any court in Nigeria , Similarly Section 308 of the

[14] **Aljarima wal Uguba Fil Alfgihul Islam**ic (Crimes and Punishment In Islamic Jurisprudence) published by Dar Alfiki Alarabi 1976 at page 10

[15] Constitution of the Federal Republic of Nigeria,(1999) capC23

Constitution[16] provides immunity for the President, Vice President, Governors and deputy Governors, under the Islamic law, no immunity for anybody both the ruler and the ruled are subjected to the same law, no exception, that basic differences between the two laws..

The major religions[17] prescribed death penalty for the act of causing death, that is the law in i.e. (life for life) that has been the law from time immemorial, for instance the Qur`an told us the story of the two sons of Adam in which one of them killed his brother out of jealousy[18]

> (*Recite to them the truth of the story of the two sons of Adam, behold they each presented a sacrifice (to Allah) it was accepted from one and not from the other, said the latter 'be sure I will slay thee") (The (selfish) soul of the other led him to the murder of his brother; he murdered him and became himself one of the lost ones)*

It is worth to note that the Islamic Law has provided the death penalty for just few offences, 1. Intentional killing (القتل) 2. Apostasy, (الردة) 3. Adultery الزناin case of married man or woman, 4. robbery (الحرابة5.) (*Hiraba*)[19], 6. Bagy البغى[20] and 7. Sodomy اللواط Under the sharia, these offences require strict evidential proof beyond the shadow of doubt and not beyond any reasonable doubt as the case under Nigerian laws.

Besides the Death Penalty, the sharia unlike Nigerian laws has also provided an option of *Diyah* (blood money) in case the relatives of the deceased are inclined to forgo the right to *Qisas* (retribution) under which the Death Penalty is applied in respect of murder. The

---

[16] ibid
[17] Judaism, Christianity and Islam.
[18] Quran 5 v 26 to 32
[19] In Arabic, the word means waging war against Allah and his Messenger, or transgressing the laws of Allah (SWT).
[20] Insurgency or rebellions

Prophet (SAW) said:[21] Whenever a man is killed, his family is between two options, either to take *Diya* (blood money) and forgive or go ahead and demand retribution (Death Penalty).

The Nigeria Criminal Laws consider the act of killing as a felony which cannot be compounded and it is the right of the state only to the exclusion of the victim's family, no individual has the right to remit murder cases, only the Government has the power to pardon capital offenders.

1.2 Statement of the Research Problem

Basically, some of the legal issues which formed the reasons behind this research work include the recent trend in the International Community moving towards the abolition of Death Penalty entirely. It is not in dispute that Nigeria is part of the International Community but its laws provide for the Death Penalty. Under the Nigerian criminal justice, once someone kills another, the society stands a chance of losing two people instead of one, the killer and the killed. The questions now "what is the essence of retaining the death penalty in our laws? Who is the beneficiary at the end? What can the society gain by the application of this Penalty? What remedies are available to the families of the deceased?

In the same vein, trying murder cases in Nigeria usually takes many years, and it also involve waste of time and energy in the process of prosecuting the offender before a verdict is arrived at by a court of law. So also, Nigerian prisons today contain a large number of condemned prisoners[22] waiting for their executive Governors to sign their death warrants.[23] Until

---

[21] Abu Zahara, *Al-Jarima Wal Uguba fil Figh Al-Islamy*, Dar Al-Fikir Al-Arabi, p. 100.

[22] Tell Magazine, February 16th, 2009, pp. 18-21; in its cover story, it was reported that over 725 condemned prisoners, including women on death row in Nigeria, live in physical and psychological anguish for periods ranging from five to 20 years, as governors show reluctance in signing their death warrants.

[23] For example, in the Criminal Procedure Code, section 294 stated: "After the sentence of death has been pronounced in the High Court, the presiding Judge shall as soon as may be convenient, forward to the Governor a copy of the trial proceedings including the judgment and the sentence together with a report in writing containing

recently, the Governors had been reluctant to approve the execution of convicts. Moreover, the Government is bearing the cost of this trials, feeding, accommodation and transportation of the accused persons. What benefits does the Nigerian society gain by this long process if at the end, the convict will be hanged? These are issues that the application of the Death Penalty in Nigeria poses especially whether to retain or abolish such a penalty.

Similarly, the application of Sharia criminal justice in some states is a point of consideration. The Death Penalty is enshrined in the principles of the Sharia, therefore if the Death Penalty is eventually abolished from Nigerian laws, that may amount to abolishing the Sharia which consist of the injunctions of the Holy Qur`an and Sunna. The issue therefore is that an apparent conflict exists between the sharia and Nigerian criminal justice in so far as an attempt is made towards the abolition of Death Penalty in Nigeria.

Similarly, under the Penal Code of Northern Nigeria and the Criminal Code of Southern Nigeria when someone is killed, his relatives have no remedy or compensations under the laws[24], usually the state takeover the case and spend many years on trial before a verdict is arrived at. Eventually, when Death Penalty is passed on the killer, the question remains who is benefiting from it? Neither the state nor the deceased family are going to gain anything from such penalty. The situation under Sharia is not the same, under the Islamic Law relatives of the killed are entitled to Diya (blood money) and when Diya is collected the life of the killer is spared.[25]

---

any recommendation or observation on the case which he think fit to make". The question here, who really has the power to pass the Death Penalty, the Governor, Or the presiding High Court Judge?

[24] Except by way of civil action, but when eventually the Death Penalty is passed on the killer, who will face the private civil case? This is a source of concern, unlike under the sharia, where the relatives can waive their right of retaliation (Qisas) and opt for blood money (Diya), thereby saving the life of the killer.

[25] Quran 2 v 179,178 and 180

A capital offenders may be sentenced to life imprisonment in some cases, but a mere visit to Nigerian prisons today will reveal the dismal situation inmates are exposed to; poor feeding, inhuman conditions, poor medical care and sanitation system, dilapidated buildings,[26] etc. In that, are Nigerian prisons all that equipped to receive, feed, accommodate, maintain and rehabilitate murderers? Because those countries that have abolished the Death Penalty are substituting it with life imprisonment and rehabilitation which as far as Nigeria is concerned, the situation as regard rehabilitation is a bit different if not bitter. Thus, the *status quo* is that where the Death Penalty is pronounced, the convict start serving another jail sentence by serving a term of imprisonment waiting to exhaust his appeals or the Governors approval for his execution. Many convicted inmates remain in prison between 5 years to 20 years or more awaiting their execution. But while section 35(1)-(5) of the 1999 Constitution is about personal liberty, it is contended that a person should not be kept in custody beyond such reasonable time, and if such rights exist before trial, why is it denied after conviction? What is the legality or otherwise of detaining hundreds of inmates in custody, when such imprisonment is not parts of their original sentence?

The reason is that, the actual power to execute a convict is not within the control of the courts which sentenced criminals,[27] but in the hands of the Executive Governors. For instance, in the case of Ajulu ***& Ors vs. Attorney General of Lagos State***,[28] a Lagos Federal High Court stopped the executing five inmates on the ground that their death warrant was not signed by the Governors.

---

[26] This information is derived from practical visit made by the researcher to Gombe, Bauchi, Kano prisons. On 10th November 2015

[27] See, for example, section 371 of the Criminal Procedure Code which specified the procedure before a sentence is carried on a convict.

[28] (unreported), Federal High Court Lagos, September 2012

Due to non signing of death warrant, where most of the executive Governors feel reluctant or refused to sign death warrants during their tenure in office, a convicted person begins to serve another uncertain term of imprisonment separate, disproportionate and outside the original sentence. There is a clear violation of the rights of the convict.[29] There is no point sentencing a person to death if that punishment cannot be carried out, justice delayed is justice denied,

Finally, Nigeria as a member of the United Nations is a signatory to many conventions, protocols and treaties, therefore is it possible for Nigeria to remove the Death Penalty from its laws and follow the international trends? And if it does, what are the modalities needed? Eventually, the 1999 Constitution must be amended to reflect that.

These legal issues cumulatively constitute a research problem which this study intends to address. However, the above examined legal issues forms the following research questions:

a) What are the adverse implications of removing the Death Penalty from Nigerian domestic laws? particularly its implications on Muslims' right to the implementation of Sharia?
b) What are the international implications if Nigeria did not fulfill its international obligations toward the abolition Death Penalty?
c) Who is the actual beneficiary from such life imprisonment in lieu of Death Penalty; will it be the society, the convict, the victim or his family?

[29] Section 35(1), (5) of the 1999 is about personal liberty to the effect that a person should not be kept in custody beyond such reasonable time. If such right exists before trial, why is it denied after conviction? What is the legality or otherwise of detaining hundreds of inmates in custody when such imprisonment is not part of their original sentence?

d) Why the international community moving towards abolition of Death Penalty worldwide?

e) What are the options available for Nigeria in the light of this argument?

1.3 Aim and Objectives of the Research

This research has five main points to achieve categorized as follows:

1. The main of this research is to appraise the application of Death Penalty under the Administration of Criminal Justice Act 2015 in Nigeria with emphasis on Gombe state, as case study making some references to Yobe, Borno, Bauchi, and Adamawa state with a view to proffer appropriate recommendation on the best way forward.
2. To discuss the current global move for the abolition of Death Penalty more particularly its tenability in Nigeria.
3. To assess the arguments adduced by proponents and opponents of the application of Death Penalty in Nigeria.
4. To examine by empirical method whether the retention of death penalty in Nigeria is effective or not?
5. To examine whether the concept of "Diya" blood money under Islamic law is acceptable or not?

1.4 Scope of the Research

The scope of this research work is limited to Gombe State as case study with some references to the North Eastern states like Borno, Yobe, Bauchi and Adamawa States.

1.5 Significance of the Research

This research work would be of significance and benefit to all stakeholders concerned with the Administration of Criminal Justice in Nigeria. Thus, the research work would be helpful and beneficial to the Government in the formulation of law and policy on Criminal Justice; to Courts, Police and Prisons in their application of Nigerian Criminal Laws; to Lawyers and Human Rights Activists in handling cases of Capital Offences; to the Society in the reduction of rates of Criminal behavior among the youth; etc.

1.6 Research Methodology

Two methodologies were used in this research;

1. **Doctrinal method or visualized research**,[30] This entails paying excessive attention to theories concerning the topic, in another words spending time in the library gathering data and information from relevant books, statutes and laws, as most of the information on this topics are found in the law books, statutes and case law, therefore the researcher used this method to gather 75% of the data contained in this work.
2. **Empirical methods or Field oriented methods**; this methods involved the collection of facts and data through interviews, questionnaires' ,etc. from target groups, the facts and data are later analyzed or experimented upon, from which results are obtained[31].

1.7 Literature Review

[30] Aboki Y. Legal Research Methodology, Tamaza publishing company limited, Zaria,2009 p2-3
[31].Ibid.

Death in the ordinary sense of it, is normal and natural end to all mankind on this planet; virtually no one will escape death. Traditionally Death has been seen as the departure of the soul from the body, in other words, the essence of being human is independent of physical properties because the soul has no corporeal manifestation, its departure cannot be seen or otherwise objectively determined, hence in this tradition the cessation of breathing has been taken as the sign of death. When such death is caused by another person is called murder and it is considered as offence punishable by death. The Quran is the only divine book that mentioned Death many times more than any book on earth and reminded the believers to be prepared for it. For references see the following verses[32] no one can escape death no matter how long or how well he lived.

Quran has provided "Every soul must test death"[33] كل نفس ذايقة الموت [34]

The Oxford Advanced Learners Dictionary[35] defines death as; "***an act of dying, being killed, the end of life, the state of being dead"*** while a legal punishment of a crime of causing death is called Death penalty.[36] The Webster's Comprehensive Dictionary defined death as " cessation of physical life, destruction " it further defines the word " penalty " as the consequences, suffering, detriment etc, that follows translation of laws or it mean judicial punishment for crime

[32] Quran chapter 2 verse 54,56,67,73,132,154,180,217,243,285,259,260. Also Quran chapter 3 verse 49,91,102,144,145,156,157,168,169,185. In addition, Quran Chapter 4 verse 15,18,78,79,100, also Quran chapter 5 verse 11 also chapter 6 verse 60,61,93,122,162,163. In addition, Quran chapter 7 verse 25,37,and 158. In addition, chapter 8 verse 50, also CHAPTER 9 verse 116. Chapter 10 verse 56. Chapter 11 verse 7. Chapter 14 verse 17. Chapter 15 verse 23. Chapter 16 verse 28,32,38,65. Chapter 19 verse 23,66. Chapter 20 verse 74. Chapter 21 verse 34,35. Chapter 22 verse 68. Chapter 23 verse 35,37,80,82. Chapter 25 verse 58. Chapter 26 verse 81. Chapter 27 verse 80. Chapter 29 verse 57,62. Chapter 30 verse 24,50,and 52. Chapter 31 verse 34. Chapter 32 verse 11. Chapter 33 verse 16. Chapter 34 verse 14. Chapter 35 verse 9,36. Chapter 39 verse 30,42. Chapter 40 verse 68. Chapter 44 verse 8,35. Chapter 45 verse 5,21,and 24. Chapter 47 verse 27,34. Chapter 50 verse 3,43. Chapter 56 verse 47,60. Chapter 57 verse 2,17. Chapter 62 verse 8. Chapter 63 verse 10,11. Chapter 67 verse 2. Chapter 87 verse 13.

[33] Chapter 21 verse 35 Holly Quran, English Translation by Mohammad Ali Yusuf((publisher Alkali Sharif Bala Kano.

[34] Quran Ch 21 v 35

[35] Hornby.A,S(1995). In Jonathan Crothers(Ed) Oxford Advanced learned Dictionary, fifth Edition, p 299

[36] Cambridge Advance Learners dictionary(3rd Edition)

of violation of the law[37] according to Tunrbull[38] death penalty laws have existed more than 4000 years, history records contains evidence that this penalty is an old form of punishment which was meant for crimes that threatened the society as whole. death penalty is a legal process where a convicted person in a capital offence is put to death by the State as punishment for his crime, and the process of carrying out this punishment is referred to as Execution.[39]

In Nigeria today five offences are punishable by death, murder, treason, treachery, giving false evidence leading to convicting an innocent man to death and conviction for armed robbery. The introduction of Sharia in some northern State has widened the offences punishable by death penalty, the constitutionality of death penalty in Nigeria is not in doubt, as the Supreme Court of Nigeria held in the case of **Onuoha Kalu v State[40]** where Justice Iguh (JSC) as he then was held that:

> Upon careful perusal of the various foreign authorities to which our attention was drawn by the opinion that the death penalty per se amount to torture , inhuman and degrading treatment and therefore intrinsically unconstitutional seems to me a minority view. Indeed a close study of those decisions reveals that the foreign jurisdiction that have similar provisions in their constitution as ours have repeatedly pounced the death penalty to be constitutional.

Same decision was upheld in Adeniji v State[41] and other cases, although death penalty remain Constitutionally valid in Nigeria, there has been national debate on its application, many argued for its retention while others argued for it abolition, the penalty has been regarded as retributive measure, if a criminal should die for his crime it will deter others because allowing him to go

---

[37] The New International Webster's comprehensive Dictionary of the English Language. Deluxe Encyclopedic Edition, Trident Press International, 1996 Edition.p493
[38] Turnbull.C.M (1978) "Death By Degree :National History" London Jonathan cape p51-66
[39] Bryan A. Garner. Black law Dictionary. Eighth edition, page 609
[40] (1998)13NWLR537;(1998)12SCNJ1
[41] (1998)14NWLR584

free will make him a threat to others, it is the duty of the state to protect and safeguard the lives and property of citizen by making sure that those violating the rights of others receive adequate punishment, but it is also argued that threats of sanctions by the state will not secure public allegiance to the law, perhaps if it did, criminal offences with highest punishment would not have been on the rise,[42] Once a court pronounces a sentence of death, such sentence alone is not sufficient to execute the convicted person. The judge shall as soon as practicable transmit to the Minister or Commissioner of Justice of the Federation or of a state, a report containing his recommendations as he thinks fit with respect to the conviction. The minister or commissioner, who most times doubles as the attorney general, considers the report and refers it to the advisory council on the prerogative of mercy. The council reports back to the A.G. who now recommends to the president or governor as the case may be, that the convicted person be pardoned or that he be executed or that the sentence of death be commuted to life imprisonment. The implication of this log process is that, the convict will remain in custody for many years, because the power to execute condemned criminal is not in the hands of the judge who sentenced him in the first place, the judges' role ends with the pronouncement of the judgments, the Governors or the President has the final say on execution, but unfortunately many of them are reluctant ant to sign death warrants.

The main apparatus producing the political momentum behind the international movement for the abolition of Death Penalty has been the commitment of the Council of Europe since 1994 and the powerful Europeans Union since 1998 to make abolition of Death Penalty a condition of membership, not only to secure a 'Death Penalty free' continent, but furthermore, through a diplomatic offensive, to work to convince 'third world countries' that "the abolition of the Death

[42] See Chapter 4 of this research, where empirical study proved that retaining death penalty did not reduced crime rate between 2000 to 2015.

Penalty contributes to the enhancement of human dignity and the progressive development of human rights".[43]

Many abolitionists believe that the content of Death Penalty application is not safe enough to guarantee fairness and neither does it end crimes; they believe that the Death Penalty is an ultimate, irreversible denial of human right, and that it is premeditated and cool-blood killing of human being by the state, violating the right to life as proclaimed in the Universal Declaration of Human Rights[44] and the right to be free from cruel, inhuman and degrading punishment. Over two-third of the world have abolished Death Penalty, in the United States about 17 States have put an end to state sanctioned killing. Amnesty International, a US based NGO partnering with human rights allies around the world are campaigning for the total stoppage of Death Penalty, opposing it for all types of crimes regardless of the nature of the offence committed, who committed the offence or the methods used for committing it.

Roger Hood, in his book about "World Developments in the Death Penalty", noted that: "The annual average rate at which countries have abolished the Death Penalty has increased from 1.5 (1965-1988) to 4 per year (1989-1995), or nearly three times as many."

International law expert, **William Schabas**, stated, fifty years ago, this movement to abolish death penalty did not even exist because there were virtually no abolitionist countries.[45] This research intends to test the validity or otherwise of the above statement to see if it is valid or not? By providing more literature on the topic, why there is increase in the number of countries joining the abolitionists?

---

[43] Roger Hood, *Towards Global Abolition of the Death Penalty: Progress and Prospects*, A Lecture delivered at The Death Penalty Project In the Hall of The Inner Temple on 21st January 2010, University of Oxford

[44] See Appendix 2

[45] Schabas, A.W. *The Abolition of Death Penalty in International Law*, Cambridge, (1997), p. 5.

In similar vein, in the case of ***Ocalan v Turkey***,[46] the European Court of Human Rights endorsed the view that Capital Punishment amounts to a form of inhuman treatment which can "no longer be seen as having any legitimate place in a democratic society." The cruelty of the Death Penalty has been described in the following terms:

> Those condemned to death often suffer acute anguish both physical and mental before execution. This is so whether the prisoner is told before hand of the date of execution or not. When the date is known, at least the fear of waking to face death without warning is removed. Even so, the stress which the condemned prisoner suffers can be great enough to cause psychosis. The methods by which executions are carried out can involve physical torture. Hanging, electrocution, the gas chamber and the firing squad may not kill instantaneously. Both hanging and garroting, which are meant to cause death at once, by breaking the neck may instead kill by strangulation. Electrocution has on occasions cause extensive burns and needed more than one application of electric current to kill the condemned. Whatever method of execution adopted each defies the concept of humanity. It is immaterial whether the state has constitutional right to impose Death Penalty for any offence.[47]

In December 2007 and 2008, the General Assembly adopted Resolutions 62/149 and 63/168 calling for a moratorium on the use of the death penalty, a lot has been written on the application of death penalty worldwide and particularly on the international floor, in Nigeria where the death penalty is till applicable many authors have made valuable contributions on the topic with the aim to make contribution to the ongoing debate on whether Nigeria should join the international community or not. Writers on this issue are categorized into those against the death penalty called (abolitionists) and those in support of death penalty called (retentionist) and others

---

46

47 Uweru, B. *The Efficacy of Death Penalty: An Analysis of a Survey of Women Hard Drug Traffickers in Benin and Warri, Nigeria*, in Ajibola, B., Kalu A. U. and Osibanjo Y. (eds.), *Narcotics: Law and Policy in Nigeria*, Federal Ministry of Justice Law Review Series, Lagos 1990, Vol. 8, 366 at 372

addressed the issue from penological or historical perspective which has nothing to do with whether they are in support or against the death penalty.

It has been observed while gathering materials for this dissertation that there is more literature against death penalty than those in its support, especially in the twentieth century due to the global move towards the abolition of death penalty. The death penalty has became the core of the International Human Rights debate today, the international Human Rights Activist are working day and night to see that death penalty is totally abolished for all crimes, they are trying to make death penalty more discretionary than mandatory, reducing the number of executions by ensuring life imprisonment should replace the death penalty.

This research intends to review the various contributions made by some authors on this topic, highlighting some gabs where this research intend to complement and recommend solution to the authorities for possible implementation. A .Adeyemi gives the historical perspective of this punishment he says;

> The rare use of the death penalty in African law system had been only for such offences which were committed in which the society hardly had any rational or effective answer to the offence. Example of such cases were the repetitive commission of highly socially disruptive acts by means of witchcraft, as well as cases of habitual and incorrigible offender such case seemed to imply underlying helplessness

and frustration, thereby leading to the invocation of elimination as penal policy. [48]

From criminological perspective Sue Titus Reid in her book Crime and Criminology defined the death penalty as" the penalty that are inflicted by the power of the state, that is the authority of law after court found the defendant guilty of crime"[49]

According to **Chinwi Lilian M,**[50] capital punishment is said to be a barbarous survival from a less enlightened and unrefined age; it is incongruous and incompatible with our present standard of civilization and humanity. In other words, abolition of the Death Penalty is a central theme in the development of international human rights law. Thus, to the researcher, the generally accepted view by the abolitionists is that the Death Penalty is a major threat to fundamental human rights. It is one of the most divisive and impassionate human right issues throughout the world.[51] It is often seen as a violation of human rights, the right to life, the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and the right to a fair trial.[52] From penology perspective, Death Penalty has been defined as "penalties that are inflicted by state, which is the authority of law after a court had found the defendant guilty of crime"[53] Dambazau has this to say on the topic:[54]

---

[48] Professor .A.A " Death Penalty Criminological Perspective" In M.A Ajomo, et al (Eds) the Nigerian Current Law Review 1988/1991, The Nigerian Institute of Legal Studies, Lagos (1993) p.1

[49] Reid S.T. (1994) "Crime and Criminology" Harcourt Brace College Publisher,p97

[50] Chenwi, L. M. "*Towards the Abolition of the Death Penalty in Africa": A Human Rights Perspective*, University of Pretoria Press, (2005), p. 19; See also section 30 on "Right to Life" under the 1999 Constitution of the Federal Republic of Nigeria

[51] T. *Moratorium 2009: An international dialogue towards a ban on Capital Punishment*, Columbia Human Rights Law Review (1999) Vol. 30, p. 421.

[52] Hood, R. *Introduction-The Importance of Abolishing the Death Penalty in Council of Europe*, Death Penalty: Beyond Abolition (2004) p. 17 cited in Chenwi L. M. *Towards the Abolition of the Death Penalty in Africa: A Human Rights Perspective*, University of Pretoria Press, (2005), p. iv.

[53] Reid, S.T. *Crime and Criminology*, Harcourt Brace College Publishers, (1994) p. 97

[54]Dambazau, A. B. *Law and Criminality in Nigeria*, University Press Plc., Zaria (1994) p. 126

> In the early history of the Death Penalty, especially in the Western society, revenge was an essential feature because in early times people did not always question it, they instead saw it as necessary in dealing with certain crimes**.**

A great number of philosophers defended the death penalty, Montesquieu explained that the death penalty:

> ….represent a kind of retaliation by which the society withdraws protection from citizen who has sought to destroy another, this punishment is derived from the nature of the crime, drawn from the fund of reason and the spring of good and evil, a citizen is serves death when he violate the security of another and has gone so far to kill him or attempt to kill him, the death penalty thus employed may be described as the medicine for social malady.[55]

M.A Owoade in his book Law of Homicide in Nigeria[56] explained that the two arguments stands clearly in the philosophical justification of capital punishment, they are retributive and deterrent theories, the latter enjoying the greater support of the adherents of the death penalty than the former, the retributive argument is based on the right of the retaliation.

Dambazau in Law and Criminality in Nigeria stated that punishment is an important ingredient in any criminal justice system[57]. He stated that death penalty is an essential feature, in the past people did not question it; they saw it as necessary punishment in dealing with certain crimes. In relation to capital punishment, deterrence could be the strongest reason for the proponents of death penalty; its abolition would lead consequently leads to increase in murder cases, especially by professional criminals.

[55] Sellin. T (1967) capital punishment. London asge. P5
[56] Owoade M.A (1990) Law of Homicide in Nigeria. Obafemi Awolowo University Press. P226
[57] Dambazau. A.B)1994) Law and Criminality in Nigeria. University Press Plc Zaria .p126

On the other hand Cesare Beccaria (1764) attacked the death penalty for the savage example it present to men, he state;

> ……. Laws designed to temper human conducts should not embrace savage example which is all the more baneful when the legally sanctioned death is inflected deliberately or ceremonially. To me it is an absurdity that the law which express common will and detests and punishment should itself commit one[58]

However he agreed that death penalty may be appropriate in certain circumstances despite his opposition to death penalty as general.

According to Walter Berns[59] Political Philosopher have addressed themselves to the question of justice. Jermy Bentam opposed the death penalty; opposition on death penalty is a face of modern thought, he further supported his argument by saying that the Bible cannot be read to support the cause of abolition of capital punishment.

Hugu Adam Bedau[60] is one of the most influential opponent of capital punishment, he considers death sentence as brutality and violence against the condemned, he argued that life imprisonment is every big retributive punishment, he poses the argument that why should a murderer deserve to die when rapist do not deserve to be raped? his views are applicable to the United State where Murder is virtually capital offence, this argument is not only faulty but defective and can be applicable to the rest of the world, further more the professor failed to examine the argument from religion perspectives. Walter Berns admitted that the Bible cannot support the case of the abolitionist because it exist in the Bible, whereas Hugu Adam Bedau failed to consider the

[58] Beccaria .C (1963) On Crime and Punishment H.Paolacci (trans) Indianapolis: Bobbs Merill p.90
[59] Berns W.(1980) Crime and delinquency. New York; basic books p 503.
[60] Bedau.H.A (2004), An Abolitionist Survey of the death penalty in America today' in Hugo Bedau and Paul Casel (eds) Debating the death penalty. Oxford University Press p 41-14

religious aspect of the debate and went on to compare murder with rape, to the researcher Hugus argument is not only faulty but defective and this where this research will make some input to the debate.

Kant[61] in 1891 is of the opinion that "*whoever commit murder must die*". Thus, deterrence could be said to be the strongest point for abolitionist. It is believed to be the greater deterrence than any other punishment and its abolition would consequently lead to an increase in murder rates.

Cesar Beccaria[62] said; *"*Laws designed to temper human conduct should not embrace a savage example which is all the more baneful when legally sanctioned, death is inflicted deliberately or ceremoniously, to me, it is absurdity that the law which expresses common will and detests and punishes homicide should itself commit one.**"** The author by using the word " to Me" has made himself God or an authority imposing his views on others, this is the weakness of western civilization where some philosophers, law makers or free thinkers assume the powers of God and impose ideas that contradict the Divine books and long standing traditions. they seems over protecting the murderer as if his life is superior to the murdered, to the researcher this is not only ill thinking but defective and malicious in many ways, the researcher intend to make his contribution on this point in the course of writing this thesis. **Peter Hodkinson**[63] said:

> The abolition of Death Penalty stands as one of the great albeit unfinished triumphs of the post second world war human right movement. The question we now face at the down of the next century is whether the trend will continue, or rather how to ensure its continuity, I make no secret of my own view that the Death Penalty, make no constructive contribution to reducing the incidents of crimes for which it is

[61] Kant. I *The Philosophy of Kant,* James Macllehouse and Sons, Glasgow (1891) p. 102
[62] Beccaria. *On Crime and Punishments,* Paolacci, H. (trans) Bobbs Merill, Indianapolis (1963) p. 90
[63] Hodgkinson. *Capital Punishment: Improve or Remove it?* In: Peter Hodgkinson and William A. Schabas (eds.) *Capital Punishment: Struggles for Abolition,* Cambridge University Press (2004) p. 1.

> traditionally reserved, in fact capital punishment merely perpetuates the pain and anger experienced by homicide victims' families and those employed to administer the process.

On the philosophy behind punishment under the common law, Lord Denin while giving evidence before the *Royal Commission on Capital Punishment* in 1953 stated:

> The punishment inflicted on grave crimes should adequately reflect the revulsion felt by the great majority of the citizens for them, it is mistake to consider the object of punishment as being deterrent or reformative or preventive only and nothing else … The ultimate justification of any punishment is not that it is a deterrent but it is emphatic denunciation by the community of a crime.[64]

As earlier stated Nigerian scholars are divided into two main groups, those in support of the Death Penalty and those against it, from the first group we have a renowned scholar of Criminal law from Ahmadu Bello University Zaria, **K.S. Chukkol**[65] who has this to say:

> There is no valid reason why we should follow the lead set by England, Western Germany, Italy and Israel to abolish the death sentence … since we still have the Death Penalty in our laws; it should be confined to the killer who intend to cause death**.**

From the above proposition, it may be understood that K. S. Chukkol is an advocate of the retention of Death Penalty; he is always of the opinion that Death Penalty is part of our laws and should be retained Nigeria does not need copy from other western countries, Similarly, **K.S. Chukkol** in his paper[66] Revisiting the death penalty added that:

> … Something expressly permitted by the Constitution cannot be described as "inhuman and degrading". The Death Penalty cannot just be abrogated by Act of the National Assembly

[64] Lord Denin " philosophy of punishment " a delivered paper before the *Royal Commission on Capital Punishment*, United Kingdom, *26th October* 1953

[65] Chukkol, K. S. *Revisiting the Death Penalty*, A Paper submitted to the roundtable discussion at the Nigerian Institute of Advance Legal Studies, Lagos, August 10th, 2010

[66] Chukkol, K. S. *Revisiting the Death Penalty*, A Paper submitted to the roundtable discussion at the Nigerian Institute of Advance Legal Studies, Lagos, August 10th, 2010

> without the body also going ahead to amend the Constitution by deleting sub-section one of section 33 of the 1999 Constitution.

Professor Chukkol raised so many issues on the application of death penalty in Nigeria, he consider that murderer deserves to die because of his common intention to cause death, to him for Nigeria to abolish the Death Penalty it must first amend its Constitution which recognized the Death Penalty, and then amend other laws such as the Penal Code, Criminal Procedure Code, the Criminal Code, finally the Criminal Procedure Act and the Administration of Criminal Justice System Act 2015. This is not a simple task indeed, most of those against the Death Penalty in Nigeria did not in any way address this point or suggest how Nigeria can join the wagon of abolitionists, this a serious gab which must be addressed.

The other camp of the opponents of Death Penalty, **Adedokun A. Adeyemi** has different view on the debate, he is of the opinion that: "… *there is no evidence for asserting the efficacy of Death Penalty for robbery. In Nigeria just as never existed for murder/culpable Homicide over the years*".[67] The lapses in Adeyemi argument (with all due respect) is that he is always citing robbery cases as an example to oppose the Death Penalty whereas robbery is not the only capital offence in Nigeria. Again, he failed to provide current and accurate statistics by imperial research covering the whole country to proof the inefficacy of death penalty in Nigeria, his various papers presented on this issue have not addressed how Nigeria can keep and maintain the huge number of convicts in our prison, he failed to address other factors surrounding the application of death penalty, In fact, the professor forgot that Nigeria is among the third world countries and what is obtained in Europe may not be easily applicable here in overnight, he has not in any way address the issue from religious perspective despite the fact that he is Christian. But be that as it may,

[67] Adeyemi, A. A. Keynote Address to the one-day round table on "*Revisiting the Death Penalty*", held at the Nigerian Institute of Advance Legal Studies, Lagos, delivered on August 10, 2010.

Professor Adeyemi is an abolitionist, and he is of the opinion that Death Penalty is not serving any purpose, as such Nigeria should abolish it completely from its laws. This research will address those gaps which the professor failed to address.

Both proponents and opponents of the Death Penalty have not addressed the issue of *Diya* (blood money) as a middle way solution to the problem, it could be Islam phobia or misconception of the whole wisdom behind the Diya option, this research intend to address it with the aim of highlighting its advantage.

By 1966, the year that the International Covenant on Civil and Political Rights (ICCPR) was approved by the United Nations General Assembly (it came into effect 10 years later), there were only 26 abolitionist countries and only 12 had abolished death penalty for all crimes, in peacetime and wartime, in civil and military law, "Even the most convinced abolitionists realize that there may be special circumstances, or particularly troublous times, which justify the introduction of the Death Penalty for a limited period. In December 1969, the British Parliament voted to confirm the Murder (Abolition of Death Penalty) Act of 1965, it only lasted for few years then was re introduced.

It is obviously clear from the aforesaid that most of the abolitionists are putting a lot of emphasis on murder cases, as if they are the only offences that attract death penalty, most of the abolitionists tend to forget that murder is not the only type of killing, there are other offences that attract death penalty like robbery, Arson and treason etc. this is an area where this research will also make an input

The debate on this topic has not been concluded yet, the topic is always fresh and has many ways of arguing, depending on one's knowledge, religion, educational background and ability to

appreciate and comprehend facts. This research will provide additional literature on the argument by moving beyond the traditional debate and shall also examine it from Nigeria's perspective in order to highlight the impact of the debate on Nigeria Criminal Justice System.

In Nigeria the Criminal Procedure codes [68] and Criminal Procedure Acts[69] have provided for the death penalty for capital offences.

The Federal Government on 13 November 2003 inaugurated a panel of experts to serve as a national study group on death penalty, the group submitted it its report on August 2004 with a call for moratorium on execution until the flaws in the Criminal Justice System are eliminated, some of the problems addressed by the group is lack of adequate and competent counsel to defend capital offender, limited funding of legal aid scheme which undermine the support system for lawyers taking this complicated and demanding cases, therefore they advised the Federal Government to review the process by which people are being sentenced to death. As a result of this report a bill was proposed to the National Assembly in 2004 to establish a commission on death penalty with the aim of carrying finding and report on the efficacy of the death penalty, this research intend to add and examine some of the issues which the study group did not address properly, it is observed that the study group did not give a conclusive advise to the Federal Government on whether death penalty should be retained or not, it is not enough to advise the Government to postponed death penalty until certain flaws in the criminal justice system are eliminated, how much time will take the Government to eliminate this flaws? What the faith of those standing trials during this time? There must be a conclusive and final advice to assist the

[68] Section 273. Provides;- (when a person is sentenced to death, the sentence shall direct that, he be hanged by the neck till he is dead) Also Section 376(2) of the Criminal Procedure Act provides; (the sentence of the court upon you, is that you be hanged by the neck until you be dead and may the Lord have mercy upon your soul) .

[69] Supra.

Federal Government in taking final decision on this punishment. The research intend to fill in this missing gaps and come out with a conclusive and final advise for the Federal Government to implement in order to address this problem.

Another point which most of the writers on the death penalty have neglected deliberately or mistakenly is addressing the issue of death from religious point of view, most of the writers are either Muslims or Christians, but one can hardly find any discussion on the topic from either Islamic point of view or Christianity. Islamic law comprises of laws which has not been codified as it is in the western laws and this is coupled with different interpretations of the primary source (the Quran), secondary source (The Sunnah) leading to divergence of opinion one issue. Both Islam and Christianity are of the view that a killer must be killed; perhaps it could be due the fact Nigeria doesn't adopt any religion as state religion. However, Section 10 of the Constitution[70] Nigeria is presumed to be secular state in nature, but is not stated anywhere in its constitution, because the majority of the populations of this country are either Muslims or Christians; those who have no religion are minority with some ethnics beliefs, therefore one can comfortably say, Nigerian individuals are not secular in their minds or believes.[71]

From Islamic point of view, the general rule set by Islam is that, under no circumstance should a Muslim kill another Muslim except by mistake. The Holly Quran has explained in details of this fact, the holly Quran In chapter 5 verse 92.

قال تعالى (وماكان لمؤمن ان يقتل مؤمنا الاخطاومن قتل مؤمنا خطا فتحرير
رقبة مؤمنة ودية مسلمة الى اهله الا ان يصدقوا فان كان من قوم عدولكم
وهومؤمن فتحرير رقبة مؤمنة وان كان من قوم بينكم وبينهم ميثاق

[70] Constitution of the Federal Republic of Nigeria,(1999) 1999 (AS AMENDED IN 2011) Cap C23,LFN (2004)

[71] Any observe can see the serious problems the Nigerian Muslims are facing because it is difficult to believe that by Section 10 of the 1999 Constitution Nigeria doesn't adopt any state religion, our public holidays, weekend in particular (Saturday and Sundays) are based on Christian calendar.

فدية مسلمة الى اهله وتحرير رقبة مؤمنه)

> Never should a believer kill a believer, except by mistake. And whoever kills a believer by mistake, it is ordained that he should free a believing slave, and pay compensation to the deceased's family, unless they remit it freely. If the deceased belonged to people at war with you, and he was a believer, the freeing of a believing slave is enough. If he belonged to people with whom you have a treaty of mutual alliance, compensation should be paid to his family, and a believing slave be freed. For those who find this beyond their means, a fast for two consecutive months is prescribed by way of repentance to Allah for Allah hath all knowledge and All wisdom"[72]

One of the major distinguish factor of Islamic law is that it is divine in origin. Under Islamic law death penalty was the prescribed punishment for the act of causing death, except where the family of the deceased opted to take (Diyya) blood money in lieu of the punishment.[73] The family of the deceased is at liberty to accept Diya compensation or put the offender to death in the same manner he killed his victim. The Quran says:

> قال تعالى (يا ايها الذين امنوا كتب عليكم القصاص في القتلي الحربالحروالعبدبالعبدوالانثي بالانثي فمن عفي له من اخيه شى فاتباع بالمعروف واداء اليه باحسان ذلك تخفيف من ربكم ورحمة فمن اعتدى بعدذالك فله عذاب اليم)

> O ye who believe, the law of retributions prescribed for you, the free for the free, the slave for the slave and the woman for the woman, but in case the injured brother is willing to show mercy to the murdered, the blood money should be paid in accordance with the general law and the murderer shall pay it in a genuine way. This is alleviation and mercy from your Lord. [74]

قال الله تعالي(يايها الذين امنوا كتب عليكم القصاص كما كتب علي الذين من قبلكم الايه) ال عمرن الاية رقم 178

[72] Quran English translation by Abdullah Yusuf Ali.
[73] See Quran chapter 2 verse 178
[74] Quran2:178-179

On the philosophy behind the harshness of Islamic punishments Sheikh Imam Abu Zahara in his book[75] stated;-

> Islamic Punishments are generally proportionate to the crimes committed, Islam prescribed punishments on the basis of equality of all people before the LORD …on the other hand all laws made by various Governments are based on what is known and obtained from their day to day life, and in most cases those on authority make laws that protects their interest in cases of peace or war…..under the Sharia all people are equal before Allah (SWT)…….its laws are applicable on the rulers as well as ruled ones…its laws always conform with our moral values and good behaviors …..Islamic punishments are two types one in this world and the other in the hereafter, Sharia law of Qisas is mercy because it is based on pure equality between the crime and the punishments

On the main differences between Islamic Law and the modern laws of today Sheikh Abu Zahara[76] made another statements:-

> The Quran and the Sunnah of the Prophet seeks to foster success and welfare of humanity in both this life and in the afterlife. The Sharia prescribes a complete code of laws to guide humankind towards establishing good (Maruf) and removing evil (Munkar) from society.
>
> The Quran is the main source of the Sharia and lays out the main principles. The Sunnah provides guidance for the application of the principles that are laid down in the Quran. There are other sources of the Sharia-Ijma and Qiyas. Ijma (consensus) can be applied when there is no clear conclusion that can be derived from the Quran or the Sunnah. Qiyas (analogical reasoning) is arrived at through a process of deduction by comparing it with a similar situation in the past. Sharia is the outcome of a continuous process of development during the 14 centuries of the existence of Islam. According to classical theory, the Sharia consists of express injunctions of the Quran, the legislation introduced through the practice of the Prophet and the opinions of jurists…….The Sharia is not merely a system of law, but also a comprehensive code of

[75] **Aljarima wal Uguba Fil Alfgihul Islam**ic (Crimes and Punishment In Islamic Jurisprudence) published by Dar Alfiki Alarabi 1976 at page 10

[76] ابوز هرهو دار الفقه العربي 1974 ص 20/Abu Zahara. Dar alfir alarabi, 1974. At page 20

> conduct that encompasses the public and private domains of an individual's activities. As opposed to the other systems of law, the Sharia operates within the internal and external domains of an individual (inner conscience and external social relations.
>
> Through interplay of rituals, beliefs, actions, and community consciousness, the individual is sought to be controlled. Islamic laws are essentially preventive and are not based solely on harsh punishment as a first resort; rather the harsh punishments are implemented as a last resort because faithful Muslims internalize the values and mores of Islamic society.
>
> They are inclined to respect the rights of others and perform their duties. Therefore, the harsh punishments prescribed by the Sharia are rarely in need of being applied. The five famous goals of the Sharia are the protection of life, mind (reputation or feelings of the individual), religion, ownership, and family. Although it has not been mentioned thus in the Quran or the Hadith, Muslim jurists agree upon these goals.

To this end, it can be observed that the bedrock behind the two laws are not the same, so also the theories behind their punishments, the first one is a law passed by legislators, who are human beings like me and you, whereas the later is considered to be from ALLAH where both the ruler and the ruled are subjected to the same law. Therefore when considering the issue of death penalty, the Islamic point of view must be put into considerations and this is where most of the writers failed to address, this research will provide adequate literature on this aspect.

It can also be observed that those supporting the abolition of the Death Penalty are not Muslims, they either from the Christian faith or those considered to be free thinkers. The Islamic point of view is clear, that Qisas (retaliations) is part of *Hudud* and shall not be compromised by any Muslim. The Quran states[77] "Nor take life, which Allah has made sacred except for just cause. ولاتقتلوا النفس التى حرم الله الابالحق [78]

[77] Quran 5:48
[78] ibid

Quran also stated that "Therefore fear not men, but fear me, and sell not my signs for a miserable price, if any do fail to judge by what Allah hath revealed, they are Unbelievers"[79].

In another verse, they are wrong doers, the guidance of ALLAH are clear and un ambiguous. In *Tafisir Ibn Kathir*, when explaining this verses, Abdullahi Bn Abbas (RA) said, in this regard, these verses indicate that any *Hakim* (judge or ruler) who refuses to judge by what Allah hath revealed is *KAFIR* unbeliever, if the ruler is completely denying Allah`s Shari'a, then such ruler is absolutely unbeliever, because Shari'a is a branch of Islam, one cannot believe in part of Islam and deny the other part. The other argument is that, if such judge or ruler thinks that the man made laws are better in terms of conformity with the needs of the people, then such judge or ruler is absolutely in disbelief. Allah`s sharia is flexible, it conform to all times and places.[80]

M.Cherif Bassioni[81] is of the view that although Islamic law mandated death penalty for some crimes, repentance and forgiveness were two consistent themes throughout the Quran and could be ground for remission of some capital offences base on the positive and sincere nature of repentance.

The main differences between the Islamic law and other laws, is that the Islamic law command its followers not to commit the offence, then prescribe the punishment, so usually a muslim is duly warned by the Quran before committing the offence, example of this Quran ch 5 v 48 which stated : "Nor take life…" "Nor commit fornication "etc perhaps that the reason why the punishments are harsh in nature, other laws define the offence only and prescribe the punishment, you can't find any common law that speak the same language of the Islamic law.

---

[79] تفسير ابن كثير الجزء الثالث ص 62Tafisir Ibn Kathir Vol 2 page 62.

[80] Ibid.

[81] Bassioni M,C (2004) ' Death Penalty in Sharia" in peter Hodkingson and William .A Schaba(eds) Capital Punishment: strategies for abolition. Cambridge University Press p 184

Christians points of view on death penalty is divided, some favors it, while others are against it. Those in support of it backs their argument with Genesis 9 which state " Whoever sheds blood of a man, by a man shall his blood be shade, for the in image of God has God made man on the other hand" while those opposed to death penalty rely on Mathew 5 Jesus said " You heard that it was said an eye for eye and tooth for tooth, But I tell you do not resist and evil person, if someone strike you on the right check turn to him the other also, You have heard it was said love your enemies and pray for those who persecute you, that you may be son of the father in heaven" generally in Christianity is difficult to find one conclusive opinion Pop John Paul 11 is of the pinion that while the authority must address the violations of personal liberties it must be sure not to go to the extreme of executing the offender except it is absolutely necessary, he went further to state that as a result of the steady re organization of penal system death penalty rarely applies.

This research intend to provide more literature on this debate, the position of law will be examined with as much details as possible in a pragmatic way in order to make a little in put in this controversial issue.

ORGANIZATIONAL LAYOUT

The organizational layout of this thesis is divided into five chapters; the first chapter contains the introduction, the justification or the reasons behind embarking on this research , the aims and objectives, methodology, the scope of the research and literature review.

The second chapter contain the concept of Criminal Justice System and its dimensions this include an overview of the legal frame work for the Criminal Justice System appraising the penalty under the Military regime, the Penal Code, the Criminal Procedure Code, The Criminal Procedure Act, the Sharia Penal Laws, the offences that attracts death penalty in Nigerian. Methods of execution and the role of other organs like Police, Attorney General, Prisons who are responsible for the administration of Criminal Justice System.

In chapter three the researcher discussed the argument for or against the death penalty, presenting both arguments and Nigerian concern over the penalty and finally the general assessment of the two arguments.

Chapter four is the empirical aspect of the thesis, where the researcher conducted a field research by visiting prisons, distributing questionnaires, conducting face to face interviews with the stake holders in the Administration of Criminal justice System in Nigeria to get real facts on the ground which can give accurate information on the application of death penalty.

Finally, chapter five contains the summary, observation and recommendation.

CHAPTER TWO

THE CONCEPT OF CRIMINAL JUSTICE AND ITS DIMENSIONS

2.1 INTRODUCTION

The essence of the Administration of Criminal justice Act 2015 is to ensure that criminal cases are efficiently managed effectively in speedy manner and that justice is done to all affected persons, the Act is meant to protect the society from crime and safe guard the interest and right of the suspect, defendants. It is worth to note here that the Act is not applicable to Gombe State High Courts, is more applied in the Federal Capital Territory[82]

For a topic of this nature, there is a need to shed some light on the various laws operating in Nigeria on the application of Death Penalty in order to mark a starting point for the research. Until 1999, however, there were only two sets of criminal laws in force in Nigeria: the Criminal Code, applicable in the southern states; and the Penal Code, applicable in the northern states. With the restoration of civilian rule in 1999, 12 states introduced Sharia criminal justice and some sharia-based penal codes were enacted.

However, the administration of Criminal justice in Nigeria comprises three sets of legal regimes: the Penal Codes laying down the Criminal offences and sentences, the Criminal Procedure Codes regulating the procedures in criminal trials, and other set of laws which relates

[82] The preamble of the Act reads as follows; "An act to make provisions for the administration of criminal justice and for related matters in the court of the Federal Capital Territory and other federal courts in Nigeria."

to the establishment of the courts and the competence of the respective judicial authorities thereby.

2.2 OVERVIEW OF THE LEGAL FRAME WORK OF CRIMINAL JUSTICE SYSTEM IN INIGERIA

Nigeria has three major Penal legislations coexisting side by side and complementing each another, they consist of the Penal Code and the accompanying Criminal Procedure Code[83] (CPC), the Criminal Code and the accompanying Criminal Procedure Act[84] (CPA) and the Sharia Penal legislations in the 12 northern states that apply Islamic Criminal Justice. These are the set of laws that defines criminal offences and their respective punishments. All these penal legislations contain provisions that Amnesty International considers contrary to international standards of fair trial, including the Death Penalty.

Pre-colonial Nigeria employed the Death Penalty in murder cases which made members of the society feel very socially insecure, and where the society also felt itself unable to cope with the problem. It is very interesting to know that currently Nigeria has no single system of Administration of Criminal Justice. According to M. T. Ladan,[85] one of the major legal problems concerning administration of justice is the confluence of three legal systems operating side by side and premised on the hierarchy of courts along which litigants can climb from the lowest

[83] Cap 81, Laws of the Federation of Nigeria 1990
[84] Cap 80, Laws of the Federation of Nigeria 1990
[85] Ladan, M. T. op cit., at pp. 292-293

court to the highest court, the effect of which is that we have three systems of courts purporting to be administering three different types of law.

For the purpose of administration of Criminal Justice, courts are classified by the Nigerian Constitution into two classes, superior courts or in other words Courts of records which comprises the Supreme Court, Court of Appeal and High Courts of the various states. The second class of courts are those called inferior courts or lower courts which comprises of Upper Area Courts, Magistrates of various grade and Area courts. It is worth to note here that this lower courts have no jurisdiction to try murder/ homicide cases or capital offences, the courts that have the power to try the offences of Murder, Homicide and Robbery are mainly the High Courts, the Court of Appeal, and the Supreme Court.

Other courts with powers to try these offences are court martial and tribunals purposely established to exercise jurisdiction in relation to a particular offences. For example, the Robbery and Firearms Tribunals established by Decree No. 5 of 1984 was bestowed with jurisdiction to try cases of robbery with power to pass Death Penalty but this was later disbanded by the Presidential Order on 29 May 1999, as well as by Decree No. 63 of 1999.

The adoption of Sharia by some Northern States resulted in the creation of Sharia Courts and Upper Sharia Courts,[86] and they were also conferred with jurisdiction to try capital offences. Cases against Muslims are normally brought to these courts for trial and sentencing while non-Muslims are not subjected to these courts, but if they so wish they are not prevented from accessing this courts for justice. However, in October 2002, Zamfara State issued a law[87] restricting all Magistrates' Courts of all grades from trying criminal cases where the parties to

[86] The Sharia Penal Code Law of Zamfara State, No. 10 of 2000 which came into operation on 27th January 2000.
[87] Section 3 of Magistrate Courts (Restriction of Powers) Law 2002

the case are Muslims; thereby giving the sharia courts more powers. Though the Magistrate's Courts are empowered by the Nigerian Criminal Justice System to try capital offences, but in some cases, they hold charges for the High Court's pending the preparation for the final arraignment of the accused before the High Court.

2.3 DEATH PENALTY UNDER MILITARY LAW

Nigerian history cannot be separated from Military leadership; the military ruled this nation from 1966 to 1979 when Shehu Shagari was elected, then from 1984 to 1999 when General Olusegun Obasanjo took over as civilian President. Nigeria has not enjoyed democracy for long time, and most of the Nigerian Constitutions were drafted during the military era, example is 1979, the aborted 1989 and the present 1999 Constitution.

The military government took over power from 1966 to 1979 and added a number of crimes punishable by death. These additions include armed robbery;[88]

Between 1966 to 1979 and 1982 to 1999 the Nigerian Constitution has been suspended by the various military regimes and the country was ruled by Decrees instead of Acts, all this has in one way or the other has affected the development of the Administration of Criminal Justice System in Nigeria.

2.4 DEATH PENALTY UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015

[88] Sections 1 of the Robbery and Firearms (Special Provisions) Act, Cap. R11, Laws of the Federation of Nigeria, 2004.

The Act is more concerned with protection of the society from crime, the promotion of effective, and speedy justice delivery with due regards to the interest of the suspect.

Section 401 (1) provides;

> Subject to the provision of a law relating to a specific offence or class of offence and to the jurisdiction conferred to any court or on the person presiding over the court, the provision of this part shall apply to the sentence of death, imprisonment, fine and non custodial sentence

The section went further is Sub section 401 (a, b, c, d, e, f and g) to categorize them as follows. Prevention of crimes, restrain criminals, rehabilitation of convicts, deterrence of other criminals, education, retribution and restitution.

Section 402 (1) provides

> Punishment of death is inflicted by handing the convict by the neck till he is dead or by lethal injection.

Sub Section (2) of the same law provides

> Punishment of death shall be pounced by the court in the following term “the sentence of the court upon you is that you be hanged by the neck until you are dead or by lethal injection”

It is further provided by Section 403 of Administration of Criminal justice Act 2015, that once the death penalty is pronounced on a convict, must be carried out in accordance with the procedure stated in section 401 (1), it is worth to note here that, the Administration of

Criminal Justice Act 2015, only recognized two methods of executions, either hanging or lethal injections, currently the most common execution methods used by Nigerian Government is hanging method.

It is also worth to note here that application of the Administration of Criminal Justice Act 2015 is yet to be extended to states High Courts; therefore the High Courts in Gombe State and the northeastern region generally are applying the old Penal Code and Criminal Procedure Code for the time being.

2.5 THE PENAL CODE AND THE CRIMINAL PROCEEDURE CODE OF THE NORTH

These two codes are complementing one another. The Penal Code in its structure states the offences, the requirements of the law to establish an offence, and then the Criminal Procedure Code states the procedure to be followed to conduct the trial of a particular offence before the courts. It is worth to note here that these codes are both applicable laws before the high court's and lower courts the only difference is that, lower courts have no jurisdiction to try certain offences[89] i.e. offences of Rape, Robbery, Treason, Murder, and Homicide are exclusively outside the jurisdiction of the lower courts.

But before examining the Death Penalty under the Penal Code, it is important to briefly look at the history and origin of the Penal code. In 1958 a panel of jurists[90] appointed by the legislature of Northern Nigeria approved the idea of introducing a code which must not be in conflict with the then existing Islamic principles. It is indeed very interesting to note that, must if not all the *Hudud* punishments which forms the backbone of Sharia criminal justice were not

[89] Capital offences generally i.e. Homicide, Rape and Treason.

[90] The chairman, Syyed Muhammad Abu Rannat (Chief Justice of Sudan), Muhammad Sharif (a retired Judge of the Supreme Court of Pakistan), Professor J.N.D. Anderson and Waziri of Borno Shetima Kasim, Mr. Peter Achimugu, M. M. Usman (Chief Alkali of Bidda)

introduced into the Penal Code. For example, having sexual intercourse with an adult woman with her consent is not an offence under the Penal Code. See Section 282, Penal Code. So also, the concept of Blood Money (*Diya*) as a way of mitigating the punishment of Death Penalty is completely removed from the penal laws, whereas it is a well-accepted principle of the Sharia.

The Penal Code came into operation on 30th September 1960[91] along with other legislations on the reform of the legal and judicial system of the Northern part of Nigeria. It is believed by the law makers then, that the Nigerian case is similar to the one in India and Sudan, therefore the Penal Code in Nigeria is said to be similar to that of India, Pakistan and Sudan. Any observer when reading any section in the Penal Code will realize that many references were usually made to the codes of India, Pakistan and Sudan, example Section 221 of the Nigerian Penal Code have almost the same wordings with Section 248 of Sudan Penal Code and Section 300 of the Pakistan Penal Code, this is perhaps due to the facts that they were British colonies.

The Penal Code is applicable to all residents (both Muslim and non- Muslim) of the states under its jurisdiction. The Penal Code has defined the act of killing another as culpable Homicide; the act further categorized Culpable Homicide into (A) Homicide punishable with death[92] and (B) Culpable Homicide punishable with death[93]

Section 220 of the Penal Code reads:

> Whoever causes death:-
>
> (a) By doing an act with the intention of causing death or such bodily injury as likely to cause death;
> (b) By doing an act with the knowledge that he is likely by such act to cause death; or

[91] Penal Code Law, 1959 (Commencement) Notice 1960, N.R.L.N. 96 of 1960
[92] Section 221, Penal Code
[93] Section 224, Penal Code

(c) By doing a rash or negligent act, commits the offence of culpable homicide.

Paragraph (A) above is dealing with cases where the intention of the killer can be proved,[94] while the part (B) is where the killer have the intention by reason of his knowledge of the result of his act. Part[95] (C) is known in English law as manslaughter[96]. In the case of manslaughter, there is no intention or knowledge on the part of the killer but negligence or rashness which result into death.

In every case that attracts Death Penalty, the prosecution must prove the following elements in order to secure a conviction:

a. death of the deceased;
b. That the act or omission of the accused was the main cause of the death;
c. That the act or omission of the accused was intentional with knowledge that death or grievous bodily harm or death would be the probable consequence. See the cases of **Okeke Vs State**[97] and the case of **Abgede Vs State**.[98]

It is the requirements of the law that for the prosecution to secure a conviction of an accused for such offence, the culpable nature must be proved beyond reasonable doubt. On the meaning of proof beyond reasonable doubt which does not mean 'proof to the hilt", Denning M. R. in *Miller Vs Minister of Pensions*,[99] states that it mean proof beyond iota of doubt.[100]

---

[94] State v Ibrahim Sabon Gari (1977)N.N.L.R 235
[95] Umaru Gwandu v Gwandu N.A (1962)1.All N.L.R 545
[96] C.O.P v Maigari Goma & 5 Ors (1965) M.N.L.R 12
[97] (1999) 2 NWLR (pt. 590) 246 at p. 273
[98] (1996) 5 NWLR (pt 448) 270 at p. 276
[99] (1947) 3 All ER 373
[100] *Onah Vs the State* (1985) 2 NWLR (pt 12) 236.

Recently, in the year 2014, the Court of Appeal Sokkoto Division affirmed the conviction of one Abdullahi Umar in the case of **Abdullahi Umar vs. The State**[101] where the court delivered its judgment convicting the accused person for the offence of culpable homicide punishable with death for having caused the death of one Jamilu Muhammed who was said to have been stabbed with a pair of scissors on the chest, with the knowledge that death would be the probable and not likely consequence of his act and thereby committed an offence punishable under Section 221(b) of the Penal Code[102]. The defence of the Appellant was that he never intended to stab the deceased and that it was indeed an accident. On the whole, the Supreme Court of Nigeria held that the appellant's case lacks merit and same was dismissed. Also in the year 2014, the Supreme Court its judgments delivered on the case of **Bello Abubakar vs. the State**[103] reaffirmed the conviction of Bello Abubakar after the prosecution has proved all the elements of the offence under Section 221 of the Penal Code

The Penal Code spells out offences that attract Death Penalty but the Criminal Procedure Code[104] spells out the procedure to be followed in proving out the punishment. Chapter 24 of the CPC states a long procedure before the death is carried out. It provides:

> After a sentence of death has been pronounced in the High Court, the presiding judge shall, as soon as may be convenient forward to the minister a copy of the trial proceeding including the judgment and sentence together with a report in writing containing any recommendation or observation on the case which he thinks fit to make.[105]

Same law under sections 295 and 296 of the CPC has spelt out in details how the death sentence can be carried out. Section 296 of the CPC states: If the minister decides not to recommend to

---

[101] (2014) LPELR, 23-190 (SC)
[102] Cap 89 Laws of Northern Nigeria, 1963, 4th Edition (1987)
[103] (2014) LPELR 23- 199 (CA)
[104] Criminal Procedure Code, Cap. C41. LFN 2004
[105] Ibid section 294(1)

the Governor that he should exercise a power referred to Section 295 in respect of a convicted person in the sentence of death pronounced upon the convicted person shall be carried into effect in accordance with the provision of this chapter.

Also, section 298 provides: The minister shall communicate the decision in accordance with the Provision of section 297, he shall order either;

(A) Direct that the sentence of the death shall be executed and the order shall state the date, time and place for the sentence of death to be carried out and give direction to place of burial of the body; or
(B) Direct that the execution shall take place at such date, time and place as shall be specified in the order and that the body of the person excited shall be buried at such place as shall be specified by such officer.

From the contents of this section, an observer will note that, the actual sentencing is not in the hands of the judge who passed the sentence, but in the hands of the President, Minister, Governor or as the case may be, who may decide not to recommend death penalty. Section 300 and 301 (1), (2), (3) and (4) have explained in details when, and how the death sentence is to be carried out. Where imprisonment is passed in lieu of death, the code is straight here, no any complication the judge will pass the sentence and forward the committal warrant to the prison direct asking them to confine the convict for such period as the judge may wish to pass.[106]

2.6 THE CRIMINAL CODE AND THE CRIMINAL PROCEEDURE CODE OF THE SOUTH

These two codes provide for the substantive as well as the procedural principles on Criminal Justice applicable in southern Nigeria. They are complementary in nature; the Criminal Code has spelt out the offences whereas the Criminal Procedure Code has prescribed the procedure of the trial of the offence before the courts. The Criminal Code is always using the words murder and manslaughter in describing the offence that carry Death Penalty, contrary to the one used in the Penal Code.

[106] Section 300 of the Criminal Procedure Code Cap C41, LFN 2004

Unlike in the Penal Code or the Criminal Procedure Code of the Northern part, the Criminal Procedure Act of the Southern part of Nigeria has prescribed the methods of carrying out the death sentence the exact words to be used by the judge when passing the sentence of death in Section 367, i.e., by hanging the offender by the neck till he be dead. It reads as follows: *"The sentence of this court upon you is that you be hanged by the neck until you be dead and may the lord have mercy on your soul."*

By these frightening words, Nigerian judges have sent thousands of convicts to their graves as punishment for committing murder. Once a court pronounces a death sentence on a convict, this pronouncement alone is not sufficient to execute the convicted person. The judge shall as soon as practicable transmit to the Minister or Commissioner of Justice of the Federation or of a State as the case may be send a report containing his recommendations as he thinks fit with respect to the conviction. The minister or commissioner, who in most times doubles as the attorney general, considers the report and refers it to the advisory council on the prerogative of mercy. The council reports to the A.G. who now recommends to the president or governor as the case may be, that the convicted person be pardoned or that he be executed, or that the sentence of death be commuted to life imprisonment.[107]

The implication of this long process is that, the power to actually carryout the sentence of death of a condemned criminal is not in the hands of the judge who convicted the accused person in the first place, the judges' role ends with the pronouncement of the judgments. The judge has power over the matter before sentencing, he makes the decision at first instance but thereafter he

[107] For this long procedure, refer to sections 293,294,295,296,297,298-301 of the Criminal Procedure Code applicable to the Northern Nigeria.

became *functus officio* in the matter. The requirement for the executive Governor to sign the death warrant before it is execution is mandatory[108].

The details of the procedure for carrying out death sentence are spelt out in Section 370 of the CPA which is prototype of the Criminal Procedure Code of the north. The law[109] spared pregnant women and children under the age of 17 years.[110] These categories of people are not liable to execution due to their conditions and tender age. An analysis of Sections 370 to 375 of the CPA indicates that the law is almost similar to the procedure under the Criminal Procedure Code if not the same; by this implication, there are many decision makers involved, the judge's role end at the moment he pronounce the verdict of death sentence and no more. The actual decision to execute the convict rests with the Governor who is the final and powerful signatory to the death warrant. If the Governor did not sign it, the convict will relinquish in the prison for long time, and some may end up spending years waiting for execution.

2.7 THE SHARIA-BASED PENAL LAWS

The shari'a is a complete system of justice and way of life to Muslims and in this context; Muslims are bound by the codes prescribed by the shari'a in their private and public life. In other words, a Muslim is not secular in nature as secularism is a western concept that is not acceptable in Islam. In respect of criminal justice, it has been enshrined in the sharia that certain offence carries *hudud* and *Qisas* the punishment for which Death Penalty is mandatory.

The Islamic penal laws flow from the Quran and are supplemented by the Hadith. Although this law is based on divine sources, it is a living body of law that looks after the needs of Islamic society. Contrary to the common perception that is widely prevalent, Islamic laws are essentially preventive and are not based solely on harsh punishment as a first resort; rather the

[108] Section 296 of the Criminal Procedure Code
[109] Section 376 ibid
[110] see Section 368 ibid

harsh punishments are implemented as a last resort. Because faithful Muslims internalize the values and mores of Islamic society, they are inclined to respect the rights of others and also perform their duties. As a consequence, the harsh punishments prescribed by the Sharia are rarely in need of being applied.

However, the application of Islamic criminal justice in the modern times has caused a lot of international debates and arguments all over the world, particularly in Nigeria with the reintroduction of Sharia in Zamfara, Sokkoto, Kebbi, Niger, Katsina, Kano, Jigawa, Kaduna, Bauchi, Yobe, Borno, etc. Non-Muslims are always agitating that the introduction of Sharia in some northern states is tantamount to Islamatization of Nigeria, whereas those introducing the law are arguing that it is within their Constitutional right and power to do.

The jurisdiction of the Sharia courts has been widened to include criminal cases. The first code of this kind was introduced at the initiative of the Governor in the northern State of Zamfara in 1999, and was followed shortly by Niger State, Bauchi, Borno, Gombe[111], Jigawa, Kaduna, Kano, Katsina, Kebbi, Sokkoto and Yobe. These states have either adopted Sharia penal legislation in part or as a full replacement of the Penal Code applicable to Muslims, and most of them are modeled on the Zamfara code.

The major difference between these codes and the Penal Code is that they have added the Sharia offences prescribed in the Qur'an such as Zina (adultery and fornication) and drinking alcohol. These are sanctioned with specific Sharia "*hudud* punishments". For example, theft is punishable by amputation of the hand, drinking of alcohol by flogging and *zina* (if the offender is married or divorced) by stoning to death. In addition, the Islamic law of homicide and hurt has also been added, with retaliation (*Qisas*) or monetary compensation (*Diya*) as punishments.

[111] Gombe State has not yet introduced Sharia as Penal Law, but there was attempt to do so in 2001.

The five objectives of the Sharia are the protection of life, intellect (reputation or feelings of the individual), religion, property, and family. Although it has not been mentioned in the Quran or the Hadith, Muslim jurists agree upon these goals.[112] And it is in respect of the ultimate goal of protecting life that Death Penalty is legislated upon under the sharia. On the basis of legislating punishments under the Sharia, Adbulkareem Zaidan has this to say:-[113]

> The Sharia encourages people to obey its laws and abstain from the unlawful … provide such punishments that can prevent and protect the society from this evil people … this punishments forms the first part in this world while the other punishments await the wrong doer in the hereafter.

The author[114] went further to illustrate the main purpose behind the Shari'a punishments, he stated as follows:

> The first purpose is to prevent and deter any person from transgressing the laws, secondly is to correct, rehabilitate the offender because this laws are divine in nature and Allah is merciful with his subject He knowth the best for them, is just like when a father want to discipline his child or a doctor treating his patients … Is just like treatments or medicine or bitter drugs which the patient does not like but it is the treatment.

The introduction of Shari`a in some northern state has generated a lot of debate among the Nigerian society because the reintroduced shari`a criminal justice has provided Death Penalty for adultery (*zina*) alongside the offence of intentional killing (*qatal*). Under the sharia-based penal codes unlike in the Penal Code and Criminal Code, adultery and apostasy are not offences and they do not attract Death Penalty. The purpose of criminalizing *zina* is the protection of people, their families and the society at large. In fact, Qur`an 17:32 prohibits coming near to *zina*. According to the Hadith, the Prophet Muhammad stated that there is no sin after

---

[112] االجريمة والعقوبة **Aljarima wal Uguba Fil Alfgihul Islam**ic (Crimes and Punishment In Islamic Jurisprudence) published by Dar Alfikir Alarabi 1976 at page 10

[113] المدخل لدراسة الشريعة الاسلاميه Al-Madakal lidrasat alsharia Al- islamiya 6th Edition, published by Alrisala Press. Algudus bookshop. 1969 at page 401.

[114] Ibid.

associations (shirk) greater in the eyes of Allah than a drop of semen which a man places in the womb which is not lawful for him.[115]

Moreover, drinking alcohol is not an offence under the Penal Code, but is punishable under the shari'a, that is where K. S. Chukkol while commenting on the issue has this to say:[116] *"The bulk of the Penal Code is at complete variance with the tenets of the Shari'a."*[117]

Sharia-based penal codes of the states that reintroduced the sharia has introduced the Death Penalty for certain offences, and this has generated a lot of arguments and debate on the legality or otherwise, and whether it conform with constitutional provisions and the international human rights standard regarding freedom of religion and some other rights which the international law seeks to protect. By section 38(1) of the 1999 constitution, every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief. This provision of the constitution is at variance with the teachings of Prophet Muhammad (saw). Under the Shari'a anybody who changes his religion should be killed; no one will compel a non-Muslim to join Islam, but a muslim denounces Islam his act attracts death penalty under Islamic Law.

Section 6(4) of the 1999 Constitution empowers States to create courts other than the one mentioned in the Constitution and to confer them with jurisdiction. However, the creation of such courts cannot be in pursuance of adoption of a state religion, which is expressly prohibited by section 10 of the Constitution. Hence, the criminal jurisdiction of any court in Nigeria can only be extended to include certain offences under a written law. And a written law is defined by

---

[115] Sahih al-Bukhari, Kitab al- Hudud

[116] Chukkol, K.S. *The Law of Crime in Nigeria*, Ahmadu Bello University Press Limited, Zaria-Nigeria, (1989), p. 18

[117] Ibid, p. 21

section 36(12) of the Constitution to be either Acts of the National Assembly or Laws of State Houses of Assembly.

The Sharia Courts are empowered to exercise jurisdiction and power over all persons professing the Islamic faith; and any other person who does not profess the Islamic faith but who voluntarily consents to the exercise of the jurisdiction of the Sharia Courts.[118]

The Sharia-Based Penal Statute is not like the Penal Code applicable to the North or Criminal Code applicable to the South. In the real sense of it, it applies to those Muslims who consented to abide by it, to this extent; section 3 of the Code provides that:

> Every person who is a Muslim and/or every other person who voluntarily consents to the exercise of the jurisdiction of any of the Sharia Courts established under the Sharia Courts Law … shall be liable to punishment under this law for every act or omission contrary to the provisions thereof of which he shall be guilty within the State.

Therefore, it should be clear that the fundamental difference is that the Sharia Penal Laws is applicable to Muslims and those who consented while the inherited Penal Code and Criminal Code are imposed by the authority on the Nigerians.

On the issue of Death Penalty, the sharia-based penal codes have provided instances where the Death Penalty becomes mandatory. These instances include:

2.7.1 Adultery or Zina

The punishment for *zina* varies under sharia, depending on the marital status of the offender. An unmarried man and woman are to be flogged 100 lashes;[119] while married men and women

[118] Section 5(1)(a) & (b) Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, 1999 of Zamfara State
[119] see Quran 24:2-4

should be stoned to death. Although no specific verse in the Holy Quran has categorically stated stoning to death, it is the Sunna of the Prophet (SAW) that prescribed this punishment, and that both Abubakar (RA) and Umar, Uthman (RA), and Ali (RA) followed the tradition of the Prophet (SAW) who stoned Gamidiya and Ma`ez for committing adultery. Thus, the offence of Adultery by any married man or woman attracts the penalty of death by stoning, because the Prophet (SAW) ordered the stoning of the woman and the man who confessed to have committed adultery. The story of the Gamidiya and Ma`ez formed the classical example for the application of death in Zina.[120]

It is important to note here that if the offenders are slaves, their punishment is 50 lashes, even if they are married,[121] because under the sharia, a slave (man or woman) is treated as half of a free person, therefore their punishment is usually half of that of free (man or woman). Also death Penalty is applicable in cases where unmarried couples are involved in illicit sex, to this extent, Section 125[122] of the Code provides:

> Whoever, being a man or a woman fully responsible, has sexual intercourse through the genital of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act, is guilty of the offence of zina.

While section 126,[123] provides for the punishments as follows:

> Whoever commits the offence of zina shall be punished:
>
> (a) With caning of one hundred lashes if unmarried and where the offender is a man shall also be liable to imprisonment for a term of one year;
>
> (b) If married, with stoning to death (rajm).

2.7.2 *Liwat* (Homosexuality)

---

[120] منهاج المسلم ص Al-jaza'eri,*Minhajull Muslim*, Dar Alfikir Alarabi, (1999) 1st Edition, at p. 409.

[121] See Quran chapter 4 verse 20. The Prophet (SAW) is reported to have said "if your female slave commit Zina, and her Zina became apparent, she should be just flogged the "Hadd" and no more" reported by Tirmizi, in Minahjul Almuslim, p. 411

[122] Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, 1999 of Zamfara State

[123] Ibid.

This refers to the act of having sexual intercourse between men, which is an unnatural behavior even among animals, and the prescribed punishment for this act under the sharia is death. The Prophet (SAW) is reported to have said: *"Whomever you find doing the act of Lut people, kills them both."*[124] (قال رسول الله صلي الله عليه وسلم من وجدتموه يعمل عمل قوم لوط فاقتلوالفاعل والمفعول به)

But the method of killing is subject of debate, Abduallahi Ibn Abbas is of the opinion that, they should be thrown from the highest building, or burnt to death or stoned to death. The debate is extensive in nature and it is beyond the scope of this dissertation. What is important to note here is that, the punishment of Liwat is death.[125]

2.7.3 Hiraba (robbery)

The term *Hiraba* means waging war against ALLAH and his Prophet. It is a *hadd* crime of robbery or banditry and the rules governing banditry have their origins in Qur'an 5:33–4.[126] The Sharia Penal Code in section 152 provides:

> Whoever commits Hiraba shall be punished:
> (a) With imprisonment for life where the offence was committed without seizure of property or causing death;
> (b) With amputation of the right hand from the wrist and the left foot from the ankle where property was seized, but death was not caused;
> (c) With death sentence where death was caused, but property was not seized;
> (d) With salb, [127]where murder was committed and property was seized.

2.7.4 Apostasy (*Ridda*)

---

[124] Narrated by Tirmizi and Abu Dawood, cited in Al-jaza'eri,*Minhajull Muslim*, op cit., at page 411.
[125] ibid, p. 23
[126] The only reward of those who make war upon God and His messenger and strive after corruption in the land will be that they will be killed or crucified, or have their hands and feet on alternate sides cut off, or will be expelled out of the land. Such will be their degradation in the world, and in the Hereafter theirs will be an awful doom. Save those who repent before ye overpower them. For know that God is Forgiving, Merciful.
[127] Crossification

Apostasy which means formal disaffiliation, abandonment or renunciation of Islam, is quite known that its penalty under Islamic law is for the apostate to be put to death. The Prophet (SAW) is reported to have said: "*Whoever changes his religion, kill him.*"

قال رسول الله صلي الله عليه وسلم (من بدل دينه فاقتلوه) In another Hadith, he is reported to have said: "*it is unlawful to kill a Muslim except in three circumstances, the adulterer*[128]*, the killer*[129] *and the one who left his religion*[130].

قال رسول الله صلي الله عليه وسلم (لا يحل دم امرى مسلم الا بثلاث الثيب الزان والقاتل والمرتد)

2.7.4 *Qatal* (القتل) (Murder)

The general rule set by Islam is that, under no circumstance should a Muslim kill another Muslim except by mistake. The Holy Quran has explained this in details:

> Never should a believer kill a believer, except by mistake. And whoever kills a believer by mistake, it is ordained that he should free a believing slave, and pay compensation to the deceased's family, unless they remit it freely. If the deceased belonged to people at war with you, and he was a believer, the freeing of a believing slave is enough. If he belonged to people with whom you have a treaty of mutual alliance, compensation should be paid to his family, and a believing slave be freed. For those who find this beyond their means, a fast for two consecutive months is prescribed by way of repentance to Allah for Allah hath all knowledge and all wisdom.[131]

The above verse is self-explanatory in the sense that it has stated categorically what to be done when a Muslim kills another. Killing a Muslim attract Diya and freeing a slave, or fasting for 60

[128] A married man, who commits Zina by having unlawful sexual intercourse with another woman not his wife,
[129] Intentional killing, a person who kills another without lawful justification should also be killed.
[130] An apostate, when a Muslim denounces Islam as his religion, it become lawful to kill him. According to another Hadith, he should be given 3 days to revert back to Islam, or he should be killed.
[131] Qur'an 5:92

days if he cannot afford a slave. Where the killed person is not Muslim but has pact of peace with the Muslims, then the killer should only pay the Diya to the family of the victim. The family is entitled to remit the compensation. If the person who killed by mistake cannot afford freeing a slave or paying compensation, fasting for two consecutive months is prescribed.[132] The sharia-based penal statutes divided homicide into intentional punishable with death (unless remitted by the relatives of the deceased, or unless falling under one of the statutory exceptions,[133] and unintentional punishable only with payment of *Diyah.*[134]

The debate on the application of Death Penalty in Nigerian Criminal Justice System rages between the Abolitionists and the Retentionist. But it must be noted that Death Penalty under the shari`a cannot be denied or abrogated because it is from the Holy Qur`an, which is believed to be divine in origin, and any attempt to suspend its laws by a Muslim amounts to apostasy (*Ridda*); therefore this debate is alien to shari`a and not acceptable to devoted Muslims.

2.8 OFFENCES THAT ATTRACT DEATH PENALTY UNDER NIGERIAN CRIMINAL LAWS

It is important to highlight the other offences that attract death Penalty under Administration of Criminal Justice System in Nigeria which has not been motioned in the previous chapter which include:.

2.8.1 Treason under section 114(3) (a) of the Armed Forces Act,[135]

[132] see Quran 4:92
[133] see section 203 Sharia Penal Code
[134] see sections 198-201, Sharia Penal Code
[135] Cap. A20, Laws of the Federation of Nigeria, 2004.

During the military regimes. Treason has defined as waging war against the sovereign in order to intimidate or overthrow the Governor General, the punishment is provided under section 411 of the Penal Code which provides death penalty, and the section reads:

> (Whoever commit treason shall be punished with death….)

Also Conspiracy to commit treason under section 37(2) of the Criminal Code attracts life imprisonment, while under section 37(1) of the Criminal Code the punishment is death penalty.

2.8.2 Armed Robbery under section 1(2) of the Robbery and Firearms (Special Provision) Act.[136] Armed robbery was punishable under the military rule with death, but under the present democratic setup the punishment is life imprisonment

2.8.3 Instigating the invasion of Nigeria under section 38 of the Criminal Code.

2.8.4 Giving false evidence leading to the conviction and execution of innocent person under section 159 of the Penal Code. Under the Penal Code where a man gives false evidence before a court of law resulting to convicting and sentencing an innocent man his punishment is death penalty Section 159(1) provide:

> Whoever gives or fabricate false evidence intending thereby to cause or knowing it to be that he will thereby caused any person to be convicted of an offence punishable with death shall be punish with imprisonment for a term which may extend to imprisonment for life and shall also be liable to fine

[136] Cap. R11, Laws of the Federation of Nigeria, 2004. See also the case of **Ndidi v State** (2007) 3 NWLR (pt 1043) 633 SC. Also the case of **Bello v State** (2007) 10 NWLR (pt 1020) 94 CA

By Section 159(2) of the Penal Code, if an innocent person is convicted and executed in consequences of such false evidence the person who gave the fabricated such evidence shall be punished with death.

2.8.5 Treachery under section 49A of the Criminal Code.

Recently, some states like Ebony, Abia and Akwa Iboms States added Kidnapping[137] into the list of those offences attracting Death Penalty. In recent times, some States in the south have passed legislations adding the offence of Kidnapping to the list of offences attracting Death Penalty in their region.[138] The Nigerian Criminal Justice System is codified in two main codes, namely the Northern Penal Code[139] applicable in the Northern part of the country and the Criminal Code[140] applicable to the southern part of the country. These two codes are made use of in capital offences, and the death sentence under these two codes is mandatory. The Judge presiding over this type of cases has no option but to impose it according to law when all the elements of the offence are proved beyond reasonable doubt by the prosecution, under each section of these laws are some ingredients or elements of prove to be established by the prosecution before the death sentence can stand. Where some of these elements are not proved beyond reasonable doubt, the penalty may be set aside on appeal. But there are two exceptions to this general rule; the death sentence shall not be imposed on pregnant women,[141] and young persons under the age of 17

[137] Internal Security and Related Matters Law (2009) of Ebony State

[138] Anambara, Abia, Akwa-Iboms, Bayelsa, Ebony, Enugu, Imo, Edo States; these states passed legislations in their respective Houses of Assembly in which they made the offence of Kidnapping a capital offence. This is because the offence has become so common in their localities. This will bring us to the comment of Professor K. S. Chukkol where *he said in one of his lectures: "Virtually there is no limit to which a legislature can go to prescribe human conduct … in other words, the legislature can widen or narrow offences that attract penalty under our law."* By the Nigerian Constitution, the House of Assembly of a State is empowered to legislate for the state.

[139] Cap 43, Laws of the Federation of Nigeria, 1958

[140] Cap. 77, Laws of the Federation of Nigeria, 1990

[141] Section 368(2) of Criminal Procedure Act; Section 271(3) of CPC

years[142]. In the case of **R. v Bangaza,**[143] the Supreme Court held that, it must be in consonance with equity and fair hearing to consider the age of the child convict at the time of the commission of the offence and at the time of passing the sentence. Similarly, the Supreme Court in the case of **Madupe v State,**[144] held that: *"if the accused person at the time the offence was committed, has not attain the age of 17 years, it will be wrong for any court not only to sentence him to death but also to pronounce or record such sentence.*" This prohibition of sentencing young person's to death is also contained in the International Convention on the Rights of the Child.

These first categories of persons, their sentence should be commuted to life imprisonments, while the second category should be kept at the Governors pleasure until he decides to release them. This expression in the opinion of the writer is mockery, Governors pleasure in this respect is prison. In Nigeria, we don't have remand home where children will be rehabilitated and even if we have it in some states, they are nothing to talk about and some of this children are kept for many years before the Governors pleasure reach them.

However, a visit to Nigerian prisons reveals the horrible and ugly face of our Criminal Justice System, as hundreds of young persons are relinquishing in prisons endlessly waiting for the Governors pleasure to reach them. The writer has personally interviewed[145] some inmates who spent 10 to 20 years waiting for this pardon. In practice, pardons and commutations of death sentences occur at both the federal and state levels. In January 2000, for instance, President Obasanjo issued a federal amnesty, ordering the pardon and release of prisoners who had been on death row for over 20 years and commutations to life imprisonment for those who had been on death row for 10 to 20 years. At the state level, in another example, the Governor of Lagos

[142] Section 368(3) Criminal Procedure Act , Section272(1) of the Criminal Procedure Code
[143] (1957) 5 FSC 1
[144] (1988) 4 NWLR (pt 87) 9 SC.
[145] Visit to Prison on 25/12/2015

pardoned and released three death row inmates in June 2009. Many State Governors do not sign execution warrants and the mass commutation of death sentences is carried out predominantly at the state level, usually on national holidays.

Amnesty International reported in 2008[146] that absence of clear guidelines obscures access to the clemency process. For instance, prisoners may be eligible for commutation or release after 10 years of good conduct on death row, but there are no guidelines defining good conduct and some prisoners report that bribes are necessary to be listed as eligible for commutation or release. The Governor of each state is the signatory of all death warrants, therefore it is within his powers to use his prerogative power to either release the young person or keep him in detention.[147]

2.9 METHODS USED IN EXECUTING CONVICTS IN NIGERIA

Basically there are two recommended methods for execution in Nigeria today the hanging methods which is the popular methods and the lethal injection prescribed by Section 402 the Administration of Criminal Justice Act 2015, the lethal injection has not been put into practice to the best knowledge of the writer also the same mode of execution is provided for by Section 37(2) and 376 of Criminal Procedure Act[148] and Section 273 of the Criminal Procedure Code.[149] The procedure for execution by hanging is as follows[150]: prior to any execution, inmate may be weighed the day before the execution; a rehearsal is done using a sandbag of the same weight as the prisoner this is to determine the length of "drop" necessary to ensure a quick death. If the rope is too long, the inmate may be decapitated, and if it's too short, the strangulation can take as

[146] Amnesty International, *Nigeria: 'Waiting for the Hangman*,' p. 23, AFR 44/020/2008, Oct. 21, 2008.
[147] The Sharia, the position is not the same; a child under the age of puberty is not criminally liable under Islamic Criminal Justice due to his tender age.
[148] The Criminal Code Act, Cap C.38, Laws of Federation of Nigeria 2004, which applies principally and exclusively to Southern Nigeria.
[149] The Penal Code, which applies principally and exclusively to Northern Nigeria
[150] Information driven from an interview granted to the writer by the comptroller General of Nigerian Prisons Abuja I n 10th Nov 2015.

long as 45 minutes the rope which should be ¾ inch to ¼ inch in diameter must be boiled and stretched to eliminate spring or coiling. The knot is lubricated with wax or soap to ensure a smooth sliding action. Immediately before the execution, the prisoners' hands and legs are secured, he is blindfolded, and the noose is placed around the neck, with a knot behind the left ear the execution takes place when a tap door is opened and the prisoner falls through the prisoners' weight causes a rapid fracture dislocation of the neck; however, instant death occurs. A doctor will examine the body to certify the convict dead. Section 413 (2) (a)(b) and (3) of the Administration of Criminal Justice Act 2015 has made clear provisions as what the order of the president should contain in regards to when, how and where the execution shall be carried on, even the place to bury the body is to be mentioned by the said order.

The third method of execution is shooting or firing squad. This method was very much in use in Nigeria, especially during Military rule. This method is mainly used for the execution of armed robbers. The prisoners will be tied to stakes at the Kirikiri shooting range before a twelve (12) man firing squad of soldiers marched in from behind the prison walls and opened fire on them. The soldiers dressed in camouflage, had black shoe polish on their faces. They used semi-automatic weapons in executing the convicts. The execution started at 9:30am and ended at 11:00am. Three (3) doctors certified the deaths. the inmates are typically bound to a stake or chair with leather straps across his waist and head in front of an oval shaped canvas wall, a black hood may be pulled over the inmates head, and the firing squad about twenty (20) feet away aims at the heart and continues shooting until death is ascertained. At least one doctor is usually is present to examine the convict and be sure of his death. A pastor or Imam is usually permitted to

pray with the convicts before their execution.[151] These are the only two methods approved by the Nigerian laws.

We shall discuss briefly some other methods of execution employed across the globe which includes the following:

2.9.1 **Beheading** (Saudi Arabia, Qatar): In Saudi Arabia the approved method is cutting the head of the offender by the sword and is a method is very old. The convict is usually handcuffed from behind, his eyes are covered with a cover, placed on his knees with his head high, then a man with a sharp sword will come and cut the head off, separating the head from the body at once. This method is currently used in Saudi Arabia and ISIS members in Syria today.

2.9.2 **Electric chair** (as an option in Alabama, Tennessee, Virginia, South Carolina, Florida, Oklahoma and Kentucky in the USA). Are modern methods of tiding the convict with an electric chair and releasing some voltage of electricity into his body through some electric wire fixed on the body of the condemned prisoner which results to instance death?

2.9.3 **Gas Chamber** (California, Missouri and Arizona in the USA). Is also a modern method used in Americans by confining the condemned prisoner to small room and thereafter releasing a toxic gas into the chamber causing the prisoner to suffocate to death?

From the above examined methods commonly used to execute death penalty convicts, the writer is of the view that it matters not which method is used in carrying out the death penalty as the ultimate objective is the elimination of the criminal concerned,

[151] Duru, Onyekachi and Wisdom Caesar(2014) "The Constitutionality Of Death Penalty Under Nigerian Law" paper presented at the National Conference for Magistrate, NJI

However, that notwithstanding, there shall be regard to humanity in the process of such execution whereby it ought to be done in such a way that less pain is inflicted on the convict.

2.10 Major Organs Charged with the Administration of Criminal Justice in Nigeria

The Administration of the Death Penalty in Gombe State is the responsibility of many organs, which must work together , starting from the arrest of the accused by the police , investigating the offence, preparing the charges, the arraignment before the court, the trial , the sentence, the detention of the accused then finally carrying on the execution of the convict. The above organs must work hand in hand in order to make the Administration of Criminal Justice System effective and speedy. Any deficiency from one of these organs will lead to miscarriage of justice; therefore the thesis will briefly appraise them in order to highlight the role of each organ.

2.10.1 The Courts.

The Judicial powers of the Federal Government are vested in the courts, Section 6 (1) of the 1999 Constitution as amended states: *the judicial powers of the federation shall be vested in the court to which this section relates, being courts established for the Federation*. Section 6(2) vested the judicial powers of the states in the courts. The courts are the only constituted body under the democratic Government that can make judicial pronouncement on death penalty upon any person found guilty of any capital offence, under the Military regime Court Marshal and Tribunals make the pronouncements. Section 33(1) of the 1999 Constitution (as Amended) stated that a person will not be deprived of the right to life save in execution of the sentence of a court in respect of criminal offence which he has been found guilty in Nigeria, there are two

meanings attached to the Section, the first one, is that no one has the right to deprive some one of his life except a court of law, the second point is that, the court will not do so except where the person is found guilty of criminal offence attracting death penalty, to this effect the Nigerian Constitution has classified the court into :

1. The Supreme Court of Nigeria; established by Section 230 (1) of the 1999 Constitution[152].
2. The Court of Appeal; established by Section 237 of the 1999 Constitution[153].
3. The Federal High Court; established by Section 249 of the 1999 Constitution.[154]
4. High Court of the Federal Capital Territory , Abuja; Section 255 the 1999 Constitution[155]
5. High Court of the States established by 270(1) the 1999 Constitution[156]
6. The Sharia Court of Appeal of the Federal Capital Territory, Abuja; established by Section 260 the 1999 Constitution[157]
7. A Sharia Court of Appeal of a state; established by Section 275 the 1999 Constitution[158]
8. The Customary Court of Appeal of the Federal Capital Territory, Abuja; established by Section 265 the 1999 Constitution.[159]
9. Customary Court of Appeal of States; established by Section 280 the 1999 Constitution[160]
10. And such other Courts as may be authorized by the law.

[152] Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011)
[153] ibid
[154] ibid
[155] ibid
[156] ibid
[157] ibid
[158] ibid
[159] ibid
[160] ibid

The Nigerian Construction in Section 4 (a) and (b)[161] further allowed the National House of Assembly or the State House of Assembly to establish court other than those mentioned, and this where some States used to introduce Sharia Courts in some Northern States with powers to pass death penalty for Zina and other capital offences.

However it is worth to note here that the courts with original jurisdiction to hear and determine cases involving capital offences are the **High Courts of State**, the **Court of Appeal** and finally the **Supreme Court of Nigeria**. All decisions arising from the High Court goes straight on appeal to the Court of Appeal and where the Convict is not Satisfied he further appeal to the Supreme Court of Nigeria which has the final of Judgment.

In Gombe State there are thirteen (13) High Courts with one Division situated in the State Capital of Gombe State, these courts are charged with the responsibility of trying capital offenders, and most of these courts have in one time or the other passed death penalty on convicted person.

2.10.2 The Nigerian Police.

The Police are one of the main organs in the field of Administration of Criminal Justice System in Nigeria, their role is very important, right from apprehending the criminal by arrest, investigation of the crime, preparing a charge and making sure that criminals are prosecuted before the law. The Nigerian police have been created by Section 214(1) of the 1999

[161] ibid

[162]Constitution as amended provided for the establishment of the Nigerian police, the Section Reads ;

> There shall be a police force for Nigeria which shall be known as the Nigeria Police Force, and subject to the provision of this section no other police force shall be established for the federation or any part thereof.

Section 4 of the Police Act[163] specified the duties of the police which include, the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and due enforcement of all laws and regulations with which they are directly charged with within Nigeria.[164] Furthermore under Part (VI) PREVENTION OF OFFENCES AND SECURITY FOR GOOD BEHAVOIUR, Section 50(1) and (2) of the Administration Criminal Justice Act 2015 has further re affirmed this duties which primarily include the prevention of crime and apprehending criminals; Section 52 of the same Act gives the police extra powers to effect arrest where they reasonably suspect a person is going to commit a crime and even without recourse to a warrant of arrest from the court of law.

2.10.3 The Attorney General.

The office of Attorney General of the Federation or the State (as the case may be) is charged with the responsibility of prosecuting capital offenders on behalf of the State, therefore it is observed that in all cases involving capital offences, the Complainant is usually the State represented by the Attorney General and no other person, the Attorney General can persecute in

[162] Supra at p77
[163] Cap 359 LFN 1990
[164] A .Abdulmumini Abubakar "Handbook on core values, traditions, customs and ethics of the Nigeria Police Force"(200) Ahmadu Bello University Press Limited , Zaria.P1

person or by a counsel in his department pursuant to Section 174(2)[165] of the 1999 Constitution, this powers to prosecute are driven from Section 174(1) of the 1999 Constitution as amended, provides: The attorney General of the Federation shall have power-

(a) To institute and undertake Criminal proceedings against any person before any court of law in Nigeria, other than court marshal, in respect of any offence created by or under any Act of the National Assembly;
(b) To take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and
(c) To discontinue at any stage before judgment is delivered any such criminal proceeding instituted or undertake by him or any other authority or person.

Under Part II of the Administration of Criminal Justice Act 2005 , Section 107(1) and (2) and Section 108 (1),(2) has stated the role of the Attorney General in preferring a charge before the court and giving legal advice on matters pertaining the commission of criminal offences before the court.

Notwithstanding the Attorney General has powers to drop all the charges against the accused person if he so wish, therefore his powers are extremely wide and cannot be ignored in this research, it is the humble opinion of the researcher that such powers needs to be checked and controlled to avoid excessive abuse of powers.

2.10.4 The Nigeria Prisons.

The Nigerian Prison Service was constituted under the provision of the prison Ordinance Cap 159 (1958)[166] and presently is being regulated by The Prison Act[167]. The Nigeria Prison[168] Service (NPS) is a Government agency which operates prisons, the Agency Headquarters is

[165] Supra at p74
[166] Federation of Nigeria, Prison Department " Standing Orders" 1961
[167] Cap P29 Laws of the Federation of Nigeria, (2004)
[168] Planning and research Department Nigerian Prison Service. Abuja.2015

situated in Abuja, and it is under the Ministry of interior, Civil defence and immigration. The origin of modern prison service in Nigeria is dated back to 1861 the year when conceptually a western type prison was established in Nigeria. The native authority prison type was abolished in 1968 and was subsequently unified with the prison service and that marked the beginning of the Nigerian Prison Service today. Decree no 9 of 1972 Spelt out the goals and orientation of the Nigerian Prison which include taking custody of those legally detained, identifying caused of their behaviors and retraining them to become useful citizen in the society, therefore the first goal is to secure the custody of legally detained person, secondly rehabilitate them thirdly reform them. Nigeria has 138 Main prisons across the nation, including 14 farm centers, 85 satellite prisons, 4 training school, one Staff College and 3 Borstal institutions.[169]

NIGERIAN PRISON POPULATION AS AT 31ST MARCH 2016[170]

S/NO	STATUS	MALE	FEMALE	TOTAL
1	Convicted	17,456,00	207	17,663
2	Awaiting trial	43,111.00	753	43,864.00
3	Total	60,567.00	960	61,527.00

It can be observed from the above table that the number of awaiting trial inmates is three or four times the number of convicted person, this is another problem in the Nigeria prison service today. During the course of compilation of this research, the researcher paid a visit to the Headquarters of the Nigeria Prison Service Abuja on 10th November 2015 and had a face to face interview with the Assistant Comptroller General of Prison (Statistics), the researcher also

[169] Ibid.
[170] Ibid.

visited Gombe, Yola. Adamawa, Bauchi, Taraba and Borno parsons where he met death row inmates, it is worth to note here that some of these prisons were established in 1830s. The condition of prison will determine the condition of prisoners, Yola prison for example was established in1914 and has marked its one hundred (100) years in 2014, and this prison is older than Nigeria and was one time a host to former President Obasanjo, Gashuwa prison was established in 1925[171].

In Gombe State, the focus of this research there are five (5) prisons, the Gombe main prison with total official capacity of 380 inmates but contains 910 inmates as at the time of compiling this research, Bajoga satellite prison with total capacity of 26 inmates (presently is not in operation, due to the activities of Boko Haram in the area),Billiri Satellite prison with total capacity of 52 inmates but is containing 283 inmates, Cham Satellite prison with official capacity of 60 inmates but is not currently in use, and finally Tula Satellite prison with total capacity of 120, but is currently housing 138 inmates[172]. All capital offenders are kept in the main prison in Gombe; there are about 15 Inmates on death row presently. it has been observed that Death row inmates are not necessarily kept in the state where there were convicted and sentenced, they can be transferred to other prisons across the country for security reason, it is also observed executions of death row inmates are mainly carried on, in either Maiduguri prison, Jos Prison or Kaduna Prison, death row inmates does not enjoy the rights or privileges of other prisoners, they are not allowed to mingle with other inmates, they hardly see the sun light they are always kept in small cells not more 16*14 feet's, the cells does not have enough light or air ventilation, the toilets are dirty, the best way to describe their food is to say it is not fit for human consumption, they are not ordinarily allowed to receive visitors. One of the death row

[171] Ibid.
[172] Prison Capacity and inmates population as at 31st March 2016.Nigerian Prison Service, Abuja

inmates[173] who spent more 25 years in death row list, at Enugu prison and who was later freed on Appeal by the Court of Appeal, after 25 years on death row cells, he wrote very interesting book which reflects the true picture of what death row inmate are going through in Nigeria, though it is the forum to discuss their predicament here, but in as much as the sentence passed is death penalty, there is no need to subject the inmates for this prolong agony, as the goes says" *anticipation of death is worse than death itself*'

The Deputy Comptroller General of prison suggested a major reforms and general rehabilitation of the prison across the country, improve the living condition of the inmates, he stated that most of these prisons were built 5o years ago, when the crime rate was very low, the present prison buildings are old model that can not fit to serve as rehabilitation and reformation centers, he suggested that if the aims and objectives of establishing these prisons are to be achieved there is need for urgent action to standardize the prison to the meet the needs of the 21 centaury.

2.10.5 The Nigerian Bar Association

The private Bar plays a very crucial role in the Administration of Criminal Justice System in Nigeria, the defence counsel who represent the accused during trials is usually picked from the private bar, depending on the financial ability of the accused person, the chances of the accused person to escape death penalty usually depends on how skilled his lawyer is, Section 36 (5) of the 1999 Constitution (as amended) presumes the accused person as innocent until the contrary is proved, the Section thus read: " Every person who is charged with criminal offence shall presumed be presumed innocent until he is proved guilty" also Section 30 of the evidence Act 1990 has set a high standard of proof in Criminal cases, which is proof beyond reasonable doubt, thus making the

[173] Arthur Angel " I refused to Die" (2010) Winduke Printing House, Lagos, Nigeria

chances of the accused to escape death penalty very high if he is represented by competent and skilled counsel. Therefore in nutshell the private BAR has major role to play in defending people facing capital offences in Nigerian Courts.

A. The legal Council[174]

(LACON) is a statutory entity under the Federal Ministry of Justice, the mandate is administer and efficient and coordinated legal aid system in Nigeria. The Legal Aid Act is too restrictive on the nature of offences the counsel can intervene, crimes like human trafficking, drugs, kidnapping, illegal possession of firearms are outside the mandate of the council but it allows the council to provide free legal representation for people accused with murder and robbery cases free of charge.

B. National Human right Commission

The commission was established by the National Human Right Commission (NHRC) ACT 1995 as amended by the National Human Right Act 2010, in line with the resolution of the United Nation General Assembly which enjoyed all member states to establish National Human Right Institution for the promotion and protection of Human Right. This commission serves as an extra judicial mechanism for the enhancement of the Human Rights, it provide a venue for public enlistment, research and dialogue.

There is other organization concerned with the rights of the death row inmates such as Amnesty International which calls for the total abolition of death penalty in Nigeria.

[174] The legal aid Act (2011)

CHAPTER THREE

ARGUMENTS FOR AND AGAINST THE APPLICATION OF DEATH PENALTY IN NIGERIA

3.1 INTRODUCTION

The abolition or retention of the Death Penalty is an international matter and the debate is long and extensive in nature and has not been laid to rest yet. Nigeria by being part of the International Community is not left out of the debate because Nigeria has signed Resolutions 62/149 of December 2007 and 63/168 of 2008 calling for a moratorium on the use of Death Penalty in the world.[175]

The world today is divided into two camps or groups on the issue of Death Penalty; the retentionist[176] and the abolitionist. Every group is aided by certain reasons to support its side of the debate. Also, every country has its own reasons or motive to retain or abolish the Death Penalty. Some countries abolished the Death Penalty in order to meet certain international requirements such as joining the EU;[177] some are motivated by International Humanitarian Aid. However, it is worthy to note that this argument was brought to Nigeria by Human Rights Activists because the Death Penalty as a form of punishment is duly recognized in the Nigeria.

---

[175] Article 14 of the Vienna Convention on the Law of Treaties; Nigeria is duty bound to respect its international obligations and make sure that it comply with the convention as signed.

[176] For example, in Egypt on 2nd February 2015, the Egyptian Supreme Court confirmed the death sentence of 183 prisoners. The men were convicted for playing a role in killing police officers in Cairo in August 2013 during upheaval that followed Army toppling President Muhammad Mursi. Human Rights Watch said: "mass death sentence is fast loosing the Egyptian Judiciary whatever reputation for independence it had." Sara Leah Winston, their spokeswoman said: "instead of weighing the evidence against each person, judges are convicting defendants in mass without regards to fair trial standards." Punch Newspaper, vol. 2266, dated 2nd February, 2015.

[177] Turkey has recently, as a move towards EU membership, undergone a reform of its legal system. Previously, there was a *de facto* moratorium on the Death Penalty in Turkey as the last execution took place in 1984. The Death Penalty was removed from peacetime law in August 2002, and in May 2004, Turkey amended its constitution in order to remove capital punishment in all circumstances. It ratified Protocol no. 13 to the European Convention on Human Rights in February 2006. As a result, Europe is a continent free of the Death Penalty in practice; all states but Russia, which has entered a moratorium, having ratified the Sixth Protocol to the European Convention on Human Rights.

The aim of this chapter is to assess the argument of these two groups in order to assess the validity or otherwise of both arguments of the proponents and opponents of the Death Penalty.

The question now is, should Nigeria join the band of abolitionists and move ahead to remove the Death Penalty from its laws? If it eventually does so, what will be the consequences? In case the Death Penalty is finally removed, can Nigerian Prisons keep and maintain these offenders to serve life terms? Do we have the resources to do that? What are the remedies available in the circumstances? What is the implication of the abolition of the Death Penalty on the practice of sharia by Muslims in Nigeria?[178] These are legal issues that this chapter seeks to address.

The aim of this chapter is to briefly trace and assess the origin of this argument both nationally and internationally in order to measure the validity or otherwise of the both arguments of the proponent and opponents over the Death Penalty, the issue of life and death should be of interest to everybody not only in Nigeria but in the world.

3.2 THE ORIGIN OF THE MOVEMENT FOR THE ABOLITION OF DEATH PENALTY

The whole debate on the abolition of the Death Penalty started on the international platform, precisely after World War II particularly with the introduction of the United Nation's *Universal Declaration of Human Right*s.[179]

Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty. Article 1 provide: "The death penalty shall be abolished. No one shall be condemned to such penalty or executed". Article 2 provides: "A State may make provision in its

[178] It is estimated that by census exercise carried out by the National Population Commission conducted in 2007 Muslims are said to constitute 50%. According to National Population office Gombe.2014
[179] Charter of Fundamental Rights of the European Union.

law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law." The Second Optional Protocol to the International Covenant on Civil and Political Rights is aiming at the abolition of the death penalty. Article 1 "No one within the jurisdiction of a State Party to the present Protocol shall be executed. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction". Article 2 ". No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime." The right to life, prohibiting the taking of anyone's life, is one of the most fundamental rights human beings. The injunction "*Thou shall not kill*" imposes an obligation on the state and persons acting in their name just as much as on private persons. Therefore the state cannot have control over anyone's life and cannot deprive anyone of his/her life. Capital punishment is an arbitrary way of taking human life and that it therefore violates the right to life

Peter Hodkinson,[180] states that:

> The abolition of the Death Penalty stands as one of the great albeit unfinished triumphs of the post second war human rights movements, the question we now face at the down of the next Century is whether the trend will continue, or rather how to ensure its continuity, I make no secret of my own view that the Death Penalty, make no constructive contribution to reducing the incidents of crimes for which it is traditionally reserved, in fact capital punishment merely perpetuates the pain and anger

[180] Hodgkinson, *Capital Punishment: Improve or Remove it?* In: Peter Hodgkinson and William A. Schabasa (eds) *Capital Punishment; Straggles for Abolition,* Cambridge University Press (2004) p. 1.

> experienced by homicide victims' families and those employed to administer the process.

This was later introduced or exported into Nigeria by Human Rights Activists who stated that human life must be respected and should not be taken by anybody under any circumstance because to them human life is divine in nature and that the Death Penalty violates the fundamental human rights principles. Thus the reason why some countries have abolished the Death Penalty in increasing numbers include a broader understanding of the Human Rights. Similarly excessive application of the Death Penalty in Europe by some of their rulers makes it widely feared to the extent that a call for its abolition gained ground. In this respect, Article 7 of the *International Covenant on Civil and Political Rights* (ICCPR) provides: "*No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.*"

This prohibition movement has attained binding force as customary international law, and there are other human rights treaties that contain identical language.[181] It can also be observed that the whole debate to remove the application of the Death Penalty emanated from western countries, mainly the United State of America, United Kingdom and some European countries. Their argument is based on the concept of humanism unlike the Islamic concept which considers death penalty as parts of the prescribed punishments from Allah. Thus, Muslims by their faith cannot attempt to remove the death penalty from the Islamic law, The Quran states "***therefore fear not men, but fear me, and sell not my signs for a miserable price, if any do fail to judge by what Allah hath revealed, they are Unbelievers***"[182]. In another verse, ***they are wrong doers***, therefore

---

[181] See the European Convention on Human Rights, art. 3. American Convention on Human rights, art. 5; African Charter on Human and Peoples Rights, art. 5; Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Artcle. 16.

[182] تفسير ابن كثير الجزء الثانى صفحه 62 Tafisir Ibn Kathir Vol 2 page 62.

one can confidently states here that the total abolition of death penalty from Islamic law is not possible based on the aforesaid verses.

Again, abolition of Death Penalty is sometimes is adopted by some countries due to political reasons, such as shifting from authoritarianism to democracy like Nigeria for example.[183] Sometimes banning the Death Penalty is a pre condition to join certain Unions such as the European Union. The United States is a notable exception in this regards as it has refused to ban the Death Penalty completely from its laws. In the USA today some States are still maintaining the Death Penalty.

The United Nations indicated that on December 18th 2014, the UN General Assembly re-affirmed for the 5th time since 2007, its resolution for worldwide moratorium on the use of Death Penalty, Resolution A/RES/69/186 enjoyed massive support at the United Nation General Assembly which recorded 117 votes in favour and 38 votes against, 34 abstentions and 4 absent. The resolution has gained support over the years and is co-sponsored by 94 states, these co-sponsored states have introduced new elements to make the text more stronger encouraging more states to take steps in respecting their international obligations by introducing additional laws reducing the application of the Death Penalty in their states.

Sometimes, banning the Death Penalty is a pre-condition to joining certain Unions such as the European Union like what Turkey is trying to do now by modifying its laws to gain entry into the EU. The international organizations such as Amnesty International and other Human Rights

[183] According to Amnesty International, the rate of executions in Nigeria dropped dramatically after the fall of the Military government in May 1999. From May 1999 to 2006, four death row inmates were executed in 2013. Nigeria had not carried out an execution since 2006. However, shortly after President Good luck Jonathan urged state governors to sign death warrants for death row prisoners on June 16, 2013, four prisoners were executed. All four individuals reportedly still had appeals pending when executed, which is a violation of Nigerian and international law.

Activists are funding the campaign for the abolition of Death Penalty in the world. Due to this vigorous campaign, almost 117 Countries worldwide[184] have abolished the application of the Death Penalty from their laws and only 34 Countries[185] are still retaining it.

M.T Ladan has this to say:[186]

> Article 7 of the International Covenant on Civil and Political Right Prohibits inhuman and degrading treatment or punishment by upholding the right of human dignity available to every individual, the second protocol on the abolition of the Death Penalty further advanced the right to dignity of human person under Article 1, 2 and 5 of the African Charter on Human and People Rights, Nigeria domesticated the African Charter as such the provisions are binding on her and the Courts have duty to ensure the State does not breach these International Obligations.

In this regard, the wife of Martin Luther King, Jr., Coretta Scott King stated this:

> As one whose husband and mother-in-law have died the victims of murder assassination, I stand firmly and unequivocally opposed to the Death Penalty for those convicted of capital offenses. An evil deed is not redeemed by an evil deed of retaliation. Justice is never advanced in the taking of a human life. Morality is never upheld by a legalized murder. An evil deed is not redeemed by an evil deed of retaliation. Although both my husband and my mother-in-law were murdered, I refuse to accept the cynical notion that their killer deserves the Death Penalty.

In the same vein, Reverend Bernice King, the daughter of Martin Luther King, Jr., stated:

> Having lost my father and grandmother to gun violence, I will understand the deep hurt and anger felt by the loved ones of those who has been murdered. Yet I can't accept the judgment that their killers deserve to be executed. This merely perpetuates the tragic, unending cycle of violence that destroys our hope for a decent society. [187]

---

[184] www.Amenisty International official website, last visited 0n 11/11/2014 indicated that ,On 18th December 2014, at the United Nation General Assembly floor , 117 States voted in favor of the abolition of Death Penalty, 38 States against it and 34 abstention, this shows there is more countries joining the band wagon of the abolitionist

[185] ibid

[186] Ladan M.T "Introduction to Jurisprudence Classical and Islamic" Malthouse Press Limited, Zaria,2010,pg418-419

[187] Available online <http://freenet-homepage.de/dpinfo/victimsfamilies.htm> accessed 30 April 2010

Moreover, the reasons why Countries have abolished the Death Penalty in increasing numbers vary from one Nation to another, for some Nations, it may due to their broader understanding of Human Rights. Spain abandoned the last vestiges of its Death Penalty in 1995, stating that: "*the Death Penalty has no place in the general penal system of advanced, civilized society. What is more degrading or afflictive punishment can be imagined than to deprive a person of his life*". Thus, Spain had abolished the Death Penalty for ordinary crimes in 1978.[188] Similarly, Switzerland abolished the Death Penalty because to them, it constituted: "*a flagrant violation of the right to life and dignity*".[189] Justice Chaskalson of the South African Constitutional Court, stated in the historic opinion banning the Death Penalty under the new constitution that: "*The rights to life and dignity are the most important of all human rights and this must be demonstrated by the State in everything that it does, including the way it punishes criminals.*"[190]

The moves for the removal of "Capital Punishments" or in other words the Death Penalty cannot be separated from the issue of human rights; therefore, there is general conception worldwide that the Death Penalty is a major threat to fundamental Human Rights. It is one of the most divisive and impassionate Human Right issues throughout the world. This view has been supported by the United Nations Commission on Human Rights (UNCHR) which has expressed its conviction that the 'abolition of the Death Penalty contributes to enhancement of human dignity and to the progressive development of human rights'.

The Human Rights approach to abolition of the Death Penalty rejects the most persistent of justifications for Capital Punishment retribution and the need to denounce and expiate through

[188] Hood, R. *The Death Penalty: A Worldwide Perspective*, Oxford (2002), p. 15
[189] ibid
[190] Makwanyane & Anr v. the State 16 HRLJ 154 (Constitutional Court of South Africa 1995).

execution those whose crimes shock society by their brutality. It also rejects the utilitarian justification that nothing less severe can act as a sufficient deterrent to those who contemplate committing Capital Crimes. This is not only because the social science evidence does not support the claim that Capital Punishment is necessary to deter murder, but because even if it could have a marginal deterrent effect, it could only be achieved by high rates of execution, mandatorily and speedily enforced. Thus abolitionists asserts that retaining the Death Penalty would increase the probability of innocents or wrongfully convicted persons being executed and also lead to the execution of people who, because of the mitigating circumstances in which their crimes were committed, do not deserve to die.

Another line of argument is that capital punishment is tantamount to a repudiation of the divine nature of man.[191] On what principles of religion or philosophy can we justify the policy of depriving a human being like ourselves of all possibility of reform? If we profess to revere a God of mercy and justice, and if we ourselves supplicate and rely on that divine mercy and justice, how can we reconcile it with our duty, as men created in the divine image[192]. The concept of abolishing the Death Penalty in the world is believed to be Christian in nature, base on Matthew Chapter 5 where it is claimed that Jesus said:

> You have heard that it was said "Eye for eye and tooth for tooth" but I tell you do not resist an evil person, if someone strikes you on the right check, turn to him the other Also… You have heard that what is said "Love your neighbor and hate your enemy" But I tell you; Love your enemies and pray for those who persecute you, that you may be sons of your fathers in heaven.[193]

[191] Matthew Chapter 5. Divine here means man is son of God as widely believed by many Christian worldwide.
[192] A Summary of Arguments Presented at a Meeting of the Men's International Theosophical League of Humanity, March 31, 1914; available at: www.theosophy-nw.org/theosnw/issues/pu-vscap.htm visited on 28th June, 2011

[193] Matthew 5 verses 38-45

Also, in the Book of John, Chapter 8 a story of the woman who was caught in the adultery, Jesus asked, He who without sin should throw the first stone?

Finally it can be observed that this abolition attempts came in full force with current modernization, globalization and westernization of the world, the so-called "civilized Nations" brought in the concept of abolishing the Death Penalty from the entire Criminal Justice System, and proffer substitute of life imprisonment.

3.3 NIGERIAN CONCERN OVER THE ABOLITION OF DEATH PENALTY

To be specific and precise, there is no single legislative or executive moratorium on the abolition of the Death Penalty in Nigeria So far, Nigeria has retained the Death Penalty for fifty four years (54 years) now and various researches[194] showed that majority of Nigerians favor the retention of the Death Penalty. The few who support its abolition are not fully in the picture of the complicity of this action because for Nigeria to legislate in favor of abolishing the Death Penalty there must be a Constitutional amendment before the aim is achieved.

In 2009, the then Chief Justice of Nigeria, Justice Idris Legbo Kutigi signed into law the Fundamental Rights (Enforcement Procedure) Rules under Chapter IV of the 1999 Constitution, expanding the obligation of National Courts to apply International Human Rights Treaties when considering Fundamental Rights. Pursuant to these Rules, the Federal and States High Courts are instructed to respect regional and international bills of rights, including the African Charter on Human and Peoples' Rights and its protocols, the Universal Declaration of Human Rights, and other instruments in the United Nations human rights system. Moreover, fundamental rights contained in the Constitution and in the African Charter are to be "expansively and purposely

[194] Adeyemi, A.A. *Death Penalty In Nigeria; The criminological Perspective*, Nigerian Current Law Review, (1988/91) at p. 10

interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them."[195]

Human rights cases are to be given priority, and any case involving the liberty of a person "shall be treated as an emergency." The Rules provide that human rights applications are not affected by limitations statutes. But the irony in this aspect is that murder cases are not treated from human right perspective, therefore the first difficulty facing any one following a case of Murder or Homicide is to find that, the offence is not bail able in nature. In the United States and Europe where this concept of human rights are developed, capital offences are bail able offences, but in Nigeria Capital Offences are not bail able except is rare and special circumstances, though the Nigerian Constitution in Section 36(5) stated: *Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty".*[196] This presumption presuppose that any person charged (not convicted) with a capital offence, shall enjoy bail while facing his trial, but that is not possible in Nigeria today. The position is supposed to be as normally stated by the law "that he who asserts must prove", before such a proof is ascertained, then the accused should be treated as innocent and accordingly put on bail. But on the contrary, the moment the authorities (be it police, State Security Department or the Director of Public Prosecution of Federal or State) decides to charge a person before the High Courts for capital offences, that accused person loses his liberty and may stay in prison for long time before his case diary is prepared and sent to court for prosecution. If eventually he is discharged and acquitted by the court, no remedy or compensation will be awarded to him.

[195] ibid
[196] Section 36(5) of the 1999 Constitution Cap C 120 LFN 2004

By implication, the Constitution has laid down some conditions to be satisfied before someone's life is taken, i.e., the sentence must have been passed by a court of law and it must relate to a criminal offence in Nigeria. Another issue here is that, no person will be deprived of his life, if the offence is committed outside Nigeria; this is the combined implication of section 33(1) of the 1999 Constitution.

3.3.1 **ARGUMENTS OF THE PROPONENTS OF DEATH PENALTY**

The first group that advocates the maintenance or retention of Death Penalty believes in its utility as a penal sanction for capital offences. According to **Kant**, whoever committed murder must die, his conviction being that punishment in general was the payment in kind for the evil committed by a person and to be fair, it has to be proportional to the offence; and in case of murder, death is the equivalent coin.

Many abolitionists believe that the content of Death Penalty application is not safe enough to guarantee fairness and neither does it end crimes; they believe that the Death Penalty is an ultimate, irreversible denial of human right. And that it is premeditated and cool-blood killing of human being by the state, violating the right to life as proclaimed in the Universal Declaration of Human Rights and the right to be free from cruel, inhuman and degrading punishment. Over two-third of the world have abolished Death Penalty, in the United States about 17 States have put an end to state sanctioned killing. Amnesty International, a US based NGO partnering with human rights allies around the world are campaigning for the total stoppage of Death Penalty, opposing it for all types of crimes regardless of the nature of the offence committed, who committed the offence or the methods used for committing it.

In similar vein, in the case of ***Ocalan v Turkey***, in March 2003, the European Court of Human Rights endorsed the view that Capital Punishment amounts to a form of inhuman treatment which can "no longer be seen as having any legitimate place in a democratic society."[197] The cruelty of the Death Penalty is described in the following terms:

> Those condemned to death often suffer acute anguish both physical and mental before execution. This is so whether the prisoner is told before hand of the date of execution or not. When the date is known, at least the fear of waking to face death without warning is removed. Even so, the stress which the condemned prisoner suffers can be great enough to cause psychosis. The methods by which executions are carried out can involve physical torture. Hanging, electrocution, the gas chamber and the firing squad may not kill instantaneously. Both hanging and garroting, which are meant to cause death at once, by breaking the neck may instead kill by strangulation. Electrocution has on occasions cause extensive burns and needed more than one application of electric current to kill the condemned. Whatever method of execution adopted each defies the concept of humanity. It is immaterial whether the state has constitutional right to impose Death Penalty for any offence.[198]

In Nigeria, one of the renowned Professors in Nigeria from this camp is K. S. Chukkol who considers the legality of the application of Death Penalty in Nigeria from constitutional point of view. In his words, he added to the debate that: *"... something expressly permitted by the constitution cannot be described as "inhuman and degrading." The Death Penalty cannot just be abrogated by Act of the National Assembly without the body also going ahead to amend the constitution by deleting sub-section one of section 33."*

---

[197] Roger Hood, *Towards Global Abolition of the Death Penalty: Progress and Prospects*, A Lecture delivered at The Death Penalty Project In the Hall of The Inner Temple on 21st January 2010, University of Oxford

[198] Uweru, B. *The Efficacy of Death Penalty: An Analysis of a Survey of Women Hard Drug Traffickers in Benin and Warri, Nigeria*, in Ajibola, B., Kalu A. U. and Osibanjo Y. (eds.), *Narcotics: Law and Policy in Nigeria*, Federal Ministry of Justice Law Review Series, Lagos 1990, Vol. 8, 366 at 372

To Paul G. Cassel,[199] he maintained the argument that: "The Death Penalty is the most effective means of preventing killers from repeating their crimes; life imprisonment without possibility of parole, prevent murderers from committing crimes, but does not prevent them from murdering in prison." Similarly, another advocate for the retention of Death Penalty is Jeff Jacoby[200] who states: "First and foremost, the Death Penalty makes it possible for justice to be done to those who commit the worse of all crimes, the execution of a murderer send a powerful moral message, that the innocent life he took was so precious and the crime he committed was horrific."

Briefly, basically the argument of the proponents of the application of death penalty is belief that the criminal should be made to suffer in proportion to the offence he has committed; therefore the Death Penalty is retribution as it deters others from committing the same crime. Thus, the retribution theory posits that criminals deserve punishment, evil deserves castigation and wrong doing deserves reparation by adequate deprivation and punishment. In their views Death Penalty incapacitates the criminals by removing them from the society thereby making it safer; they also argued that imposing life imprisonment may not necessarily prevent a convict from killing his inmates or prison guard. Also expenditure wise, applying Death Penalty is less expensive than to keep a convict in prison for life.

Again if eventually the Death Penalty is removed from our laws, Nigeria does not have the facilities to keep criminals in prisons life? A mere visit[201] to any prison in this Nigeria will reveal the dilapidated condition of custodial institutions in Nigeria; there is no decent food, no clean water, no medical facilities, no opportunity to acquire professional skills, prison officers

[199] Cassel P.G (2004) "In defense of Death Penalty" In Hugo Bedau and Paul Cassel(Eds) debating the Death Penalty, Oxford University p.185
[200] Jeff Jacoby, *When murderers die innocent lives,* The Boston Globe, September 28, 2003
[201] This information is gathered from imperial study made by the researcher see Chapter V.

are poorly paid, etc. is doubtful if Nigerian prisons can cope with the situation if the death sentence is abolished?[202] Consequently, abolition of the Death Penalty can promote self-help; the mere thinking that what a murderer would get is life in prison with possibility of pardon may compel an overzealous victim to seek revenge outside the law, Adeyemi A.A if of the opinion that currently no evidence to establish that Nigerian prisons are reforming inmates, the reverse is the case.[203] To crown their support for the application of death penalty abolitionist argued that the application of Death Penalty in Nigeria is constitutional,[204] it being duly recognized by Nigerian laws; as such its utility is legal. Moreover, in Nigeria, mere legislation by the National Assembly cannot abolish Death Penalty, because the principle of federalism enjoyed by states and that it may lead to further controversy with the majority of the states in the north drawing the conclusion that outright abolition of Death Penalty is intended to fight the application of Sharia through the backdoor.

3.3.2 ARGUMENTS OF THE OPPONENTS OF DEATH PENALTY

The opponents of the application of Death Penalty are known as abolitionists are waging vigorous global campaign against this penalty on the footing of its inefficacy in reducing crime rates, its repugnance to modern civilization, its violation of human dignity, etc. David

---

[202] According to Amnesty International 2013 Nigerian Prison conditions and the treatment of prisoners on death row are harsh and life-threatening throughout the country. Most prisons in Nigeria were built prior to 1960 and are in such a state of decay. Prisons are grossly overcrowded, with some prisons holding more than 800 percent of their designed capacity. Lack of potable water and inadequate sewage facilities result in dangerous and unsanitary conditions. Ventilation is insufficient, and prisoners are forced to use buckets as toilets, with little or no privacy. The food provided on a budget of approximately $1.50 a day per prisoner is of very poor quality. Because "prison officials routinely [steal] money provided for food for prisoners," only those with resources or relatives who are able to bring food have regularly adequate nutrition. Bedding is inadequate; some prisoners must sleep on concrete floors, without blankets. Extortion, abuse and torture are common.

[203] Adeyemi, A.A. *Death Penalty in Nigeria: The Criminological Perspective*, Nigerian Current Law Review, (1988/91), pp. 1-34 at p. 10.

[204] Section 33(1) of the 1999 Constitution; Section 30(1)1979; Section 32(1) 1989 Constitution; and the Constitution of 1960-1963 which have the same wordings. All Nigerian Constitutions from 1960 to 1999 are pari-material except that of 1979, 1989 and 1999 which introduced the phrase "in Nigeria" at the end of its sentence, death sentence are the basis of deprivation of life, the phrase has not been subjected to judicial interpretation yet, the implication of this Section is that if the crime is committed outside Nigeria or the Sentence passed is by a foreign country that sentence cannot be considered.

Cameron,[205] one of the strongest opponents of Death Penalty stated: "*If someone murdered one of my children then emotionally, obviously I would want to kill him, how could you not? But I don't honestly think in a civilized society like ours, that you can have the Death Penalty anymore.*" Thus, the abolitionists see the abolition of Death Penalty as incompatible with modern civilization. Their main argument is that Crime rates are increasing despite the existence of the Death Penalty in our criminal laws

One of the popular Nigerian figures in this group is Adeyemi A.A who is of the view that Death Penalty should be removed from our laws because according to him: **"…** There is no evidence for asserting the efficacy of Death Penalty for robbery. In Nigeria just as never existed for murder/culpable homicide over the years"[206] Adeyemi called for the DE capitalization of robbery and murder offences, that in order to achieve the goal.

Professor Hugo Adam Bedau,[207] one of the strongest advocates for the abolition of Death Penalty described the punishment as brutal and violates the humanity of the condemned person. He argued that life imprisonment for murder is retributive as Death Penalty, and he poses the question why should murderers deserve to die when rapist do not deserve to be raped?

Many retentionist argued that is irreversible when carried on and "primitive instinct of revenge"; it is premeditated and cold blooded killing of human beings by states. In this modern civilized century, Death Penalty is very unpopular because many countries have abolished it from their legal system. The United Nation in December 2007 and 2008 in its General Assembly adopted

[205] Britain Prime Minister between 2010-2013
[206] Adeyemi, A.A. op cit., pp. 16-19
[207] Bedau H.A. *An Abolition Survey of Death Penalty in America Today*, in: Hugo Bedau and Paul Casell (eds), Debating the Death Penalty, Oxford University Press(2004) pp. 41-42

Resolutions 62/149 and 63/168 calling for moratorium on the use of Death Penalty.[208] Also, Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) and the Second Optional Protocol on the **Abolition of Death Penalty** contributes to the enhancement of human dignity and progressive development of human rights. As Nigeria is signatory to this treaty, therefore it is maintained by the abolitionists scholars that Nigeria must respect its international obligation and ban the application of Death Penalty. It has been argued that execution of the offenders will influence the behavior of the criminals to be more violent because they knew if they did not succeed in their crime, they will face the Death Penalty. It also encourages revenge and negates the spirit of forgiveness in the society. Also it is argued that deterrence cannot be achieved by imposing severe punishments, because the benefit to be achieved does not exist anywhere in the world on account of lapses in the criminal administration machinery. Opponents of the Death Penalty argue that this punishment is being used more often against perpetrators from racial and ethnic minorities and from lower socio-economic backgrounds than against those criminals who come from a privileged background; and that the background of the victim also influences the outcome. Most of the capital offences were committed under the influence of drugs, alcohol, or mild insanity, then how can Death Penalty serve as deterrent in such cases?

Death Penalty is irreversible and there is tendency that an innocent may be executed in the process. Many judgments are over turned on Appeal. Once a convict is executed mistakenly, he never comes back. For example, in the case of ***Nasiru Bello Vs Oyo State***[209]**,** Nasiru was convicted for armed robbery, and he was executed while his appeal was pending at the Supreme Court, the court held that his execution was unlawful, illegal and injurious to the accused

[208] In 18th December 2014, at the United Nation General Assembly, almost 117 States voted against the Death Penalty, 38 in favor while 4 absented, this shows that the world is moving towards total abolition of Death Penalty.
[209] (1986) 5 NWLR (pt 45) p. 828

person's right to life. But just because a conviction is overturned doesn't mean that the conviction was a mistake on the merits. Convictions are overturned regularly for many reasons, including technical ones. Many times guilty people go free because evidence that was used at trial is later determined during an appeal to have been improperly obtained.

The Death Penalty is an instrument of political oppression as the act of killing by the authorized officials is also killing not different from the initial crime committed, It is also argued to be discriminatory against women and children[210] in States implementing Sharia in Nigeria, in ***Muhammed Garuba & Ors Vs Attorney General of Lagos State***[211]**,** the court passed death sentence on twelve year children, and this action has been criticized widely. In the case of ***Madipe Vs State***[212]**,** the Supreme Court held: " *if at the time the offence was committed an accused with capital offence has not attain the age of 17 years, it will be wrong for any court not to only sentence him to death but also to pronounce it or record same."* They further argued that theory of deterrence is negated by the delay, ineffectiveness and judicial system laxity in the enforcement of Death Penalty. In most murder trials, justice depends on the financial strength of the criminal and his ability to hire a good lawyer to defend him on trials. The negative effects of this is that poor people are denied justice in our courts because they can't afford to defend themselves, so they end up with incompetent state counsels standing for them, which may consequently lead them to face executions. To the abolitionist inflicting death Penalty negates the fundamental basis of punishment which is rehabilitating the offender; by executing the offender, this chance is permanently lost. Thus, imposing Death Penalty on the offender is denies him the opportunity to appreciate the magnitude of his crime and his ability to adjust his life after

[210] The unreported case of Safiya Husseini and Amina Lawal has caused national and international controversy; it was alleged that the two women were sentenced to death by stoning under Sharia Penal Code Laws, while their male counterparts goes free.
[211] (Unreported) Suit No. ID/559M/90 High Court of Lagos, Ikeja Judicial Division.
[212] (1988) 4 NWLR (PT 87) 130 SC

the realization of his offence. They are of the opinion that removing the convict from the society by keeping him in custody for life will make him suffer most; it will make the offender more remorseful for their grievous misconduct and offer them opportunity of reinstitution Some of their strong points of arguments are basically cat be itemized in the following points :

1. Death Penalty contains the same elements of the act of "killing" which the society frown at.
2. The worthiness of human life is lowered or reduced by imposing Death Penalty.
3. Imposing Death Penalty will not address the offender's reason for committing the crime as well as will not reduce the pain felt by the family of the victim.
4. All the methods used to execute offenders today are barbarous in nature. When the offender killed his victim, was he merciful; killing is killing and is all barbarous in nature.
5. The issue of Death row inmates is another problem to Nigerian prisons, as many convicted persons wait indefinitely for their death warrant to be signed by the Governor or President as the case may be. This is because, once a court pronounces a death sentence on a convict, this pronouncement alone is not sufficient to execute the convicted person, the convict undergo a new torture - the knowledge of the convict that he will be killed is painful because the condemned prisoner goes through mental and psychological torture. [213] For example, in the case of *Peter Nemi Vs A.G. of Lagos State,*[214] the case of the appellant was that having suffering physical and psychological pain on Death row for eight years (September 1982-March 1990) amounted to inhuman and degrading treatment contrary to section 31(1) (a) of the 1979 Constitution (now section 34(1) (a) of 1999

[213] There is a saying that: "anticipation of death is worse than death itself".
[214] (1990)NWWLR (pt65) at 314

Constitution of Nigeria, the Supreme Court upheld the case of the appellant and commuted his sentence to life imprisonment.

6. Death Penalty causes loss of two lives, the victim and the convict; hence, no one stands to benefit from executing the convict. Neither the state, the families nor the society will drive any benefit thereby.

3.4 AN ASSESSMENT ON THE TWO ARGUMENTS (FOR AND AGAINST) THE APPLICATIN OF DEATH PENALTY

Assessing the two arguments in this chapter is not an easy task as the debate is endless and inconclusive in nature, to date this debate has not been laid to rest, However it can observed that retentionist are of the opinion that abolition of death penalty will result in increase in murder especially by professional criminal on the contrary the abolitionist argued that despite retaining the death penalty in Nigeria, no evidence to proof that retaining the death penalty has reduced murder cases over the years, on the contrary criminal became more violent and aggressive while committing their crime because they know once they are apprehended the punishment is death penalty.

Again the retentionist argued that it is very expensive to replace death penalty with life imprisonment because keeping a convict in custody for life entails feeding him, accommodating him, providing him with health care facilities which the state will shoulder on daily basis, so is cheaper for the state to execute the convicts and save the cost, on the other hand the abolitionist argued that in murder trial justice depend on the efficacy of the judicial system many times the state has executed some convicts and later is discovered that they are innocent people and once execution is carried on it can never be reversed, therefore is safer to free a convict than execute

an innocent man, they further argued that if the essence of application of death penalty is deterrence, that deterrence cannot be achieved by imposing severe punishment.

The abolitionist argued that inflicting death penalty leads to the loss of two lives, hence no one will derive any benefit from, on the contrary the retentionist replied that the retribution theory posits that applying the death penalty on a convict incapacitate such convict from committing further crime, as no any assurance or guarantee that keeping a convict in custody will deter him from killing an inmate or prison official in an attempt to escape, therefore a convict should be made to suffer in proportion to the offence he committed, that will deter others from committing same, the deterrence referred to here is for others and not the convict.

The abolitionist regards Capital punishments as barbarous from less enlightened and in compatible with our present standard of civilization and it is a threat to fundamental human rights and humanity [215] on the other hand the retentionist regards it as a matter of sovereignty reflecting their religious values and culture resisting the argument that it forms parts of human rights, the abolitionist view, is that the only way to destroy a criminal is by reforming him, destroying his bodily life is nothing but a stupid blunder[216] this argument has been rejected by the retentionist on the ground that what assurance is there that such criminal will not commit same in custody, to whom benefit does it work? Executing the criminal is cheaper financially to the state, especially Nigeria where the prisons lacks basic facilities to keep such offenders.

[215] Chenewi Lilian M: Towards the abolition of the death penalty in Africa: A Human perspective, University of Pretoria Press, 2005,p6

[216] Human Rights Advocacy –Law and our Rights; Death Penalty; should it exist or no? Issue No.212,Oct,222003wwwthe dailystar.net/law/2005/10/02/index.htm last visited 28 February 2017

The retentionist further argued that death penalty is constitutional and legal in Nigeria citing cases like Okoro v State and Kalu v State [217] where the court held that the death penalty and its method of execution is lawful, valid as same as sanctioned by both section 33(1) and section 34(1)(a) of the 1999 constitution, therefore death penalty doesn't violate the supreme law of the land but the abolitionist on the contrary backed their position with international laws and convections prohibiting the application of death penalty especially the United Nation resolution 62/149 and 63/168 of 2007, 2008 calling for the moratorium of death penalty to which Nigeria is signatory calling on Nigeria to domesticate this resolution into her municipal laws.

The argument for or against the application of death penalty is inconclusive in nature and it all depends on ones knowledge, political views, religious view and personal perspective, but apparently there is more write up on abolition of death penalty than its retention, the abolitionist while advocating for their views against death penalty paid little or no attention at all to the Muslim majority in Nigeria either mistakenly or deliberately they ignored the Islamic point of view on this sensitive topic bearing in mind that there are large number of Muslims in Nigeria.

The Islamic point of view has been clearly stated in Quran precisely in the following verses[218] cited below for reference.

The Holly Quran provided in[219]:

---

[217] Cited supra p 2

[218] Quran chapter 2 verse 54,56,67,73,132,154,180,217,243,285,259,260. Also Quran chapter 3 verse 49,91,102,144,145,156,157,168,169,185. In addition, Quran Chapter 4 verse 15,18,78,79,100, also Quran chapter 5 verse 11 also chapter 6 verse 60,61,93,122,162,163. In addition, Quran chapter 7 verse 25,37,and 158. In addition, chapter 8 verse 50, also CHAPTER 9 verse 116. Chapter 10 verse 56. Chapter 11 verse 7. Chapter 14 verse 17. Chapter 15 verse 23. Chapter 16 verse 28,32,38,65. Chapter 19 verse 23,66. Chapter 20 verse 74. Chapter 21 verse 34,35. Chapter 22 verse 68. Chapter 23 verse 35,37,80,82. Chapter 25 verse 58. Chapter 26 verse 81. Chapter 27 verse 80. Chapter 29 verse 57,62. Chapter 30 verse 24,50,and 52. Chapter 31 verse 34. Chapter 32 verse 11. Chapter 33 verse 16. Chapter 34 verse 14. Chapter 35 verse 9,36. Chapter 39 verse 30,42. Chapter 40 verse 68. Chapter 44 verse 8,35. Chapter 45 verse 5,21,and 24. Chapter 47 verse 27,34. Chapter 50 verse 3,43. Chapter 56 verse 47,60. Chapter 57 verse 2,17. Chapter 62 verse 8. Chapter 63 verse 10,11. Chapter 67 verse 2. Chapter 87 verse 13.

> "Come, I will rehearse what Allah hath (really) prohibited you from": Join not anything with Him; be good to your parents; kill not your children on a plea of want, We provide sustenance for you and for them; come not nigh to indecent deeds, Whether open or secret; take not life which Allah hath made sacred, except by way of justice and law: thus doth He command you, that ye may learn wisdom

Again in Quran In chapter 5 verse 92.

> "*Never should a believer kill a believer, except by mistake. And whoever kills a believer by mistake, it is ordained that he should free a believing slave, and pay compensation to the deceased's family, unless they remit it freely. If the deceased belonged to people at war with you, and he was a believer, the freeing of a believing slave is enough. If he belonged to people with whom you have a treaty of mutual alliance, compensation should be paid to his family, and a believing slave be freed. For those who find this beyond their means, a fast for two consecutive months is prescribed by way of repentance to Allah for Allah hath All knowledge and All wisdom"*

Islamic law has provided the concept of *Diya* or blood money, by which the relatives of the deceased can accept blood money in lieu of inflicting the death penalty on the convict, thereby saving another life, compensating the family of the deceased, in the whole debate the two groups have not mention that concept.

The position of researcher is that introducing the Diya concept into this argument will resolve the whole debate in favour of all parties, if the aim of the abolitionist is to protect the life of the criminal that can be achieved by accepting the Diya.

Another point worth of discussing in this assessment is that, the abolitionist seems to be more concern about the life of the criminal than the victim of the crime, there was nowhere in their entire argument they talked the fundamental human rights of the victim, as if such victim does not enjoy any protection under the law, no remedy were provided for any person who loses

[219] Chapter 6 verse 151.

his life, on the contrary the retentionist are more concern about the right of the victim and the rights of others, in their views executing the criminal will avenge for the lost life and provide protection for the society, they consider a murderer as a bad egg which must be removed immediately from the society, they consider such elimination as a lesson to the other criminals not to commit same or else face the same consequences.

Finally the researcher stands with retentionist simply for few reasons, the first reason is being a muslim, no muslim will attempt to remove it or deny its applicability, death penalty is prescribed by the Quran which is a divine law from ALLAH, the Qur`an[220] Provides:*"...therefore fear not men, but fear me, and sell not my signs for a miserable price, if any do fail to judge by what Allah hath revealed, they are Unbelievers"*[221] *In another verse "……they are wrong doers"*[222]

Again in another verse Allah (swt) said "...they are those who rebel"[223] .

Secondly Nigerian prisons are not a place where a criminal can be reformed due some reason which is not the scope of this research, thirdly the death penalty is an old form of punishment, and the current movement for its abolition is a new thing which needs to be examined properly in the light of existing Nigeria legal system.

[220] Chapter 5 verse 43 to 45 Holly Quran, Mushaf Al-Madina
[221] Supra verse 43 Roman Translation of the Holly Quran by Abdullah Yusuf Ali.
[222] ibid verse 45
[223] Ibid.

CHAPTER FOUR

DEATH PENALTY IN NIGERIA

4.1 INTRODUCTION

This chapter present and analyze the data assembled from field visits to the relevant stakeholders involved in the Administration of the Criminal Justice System in Nigeria, the the chapter aims at examining whether retention of the death penalty in Nigeria has reduced the crime rate between 2000 to 2015. The chapter also presents and analyzes current data assembled from the questionnaire, interview and field visits to the relevant stakeholders involved in the Administration of Criminal Justice pertaining to the application of the Death Penalty in Nigeria, the aim of this chapter is to present the current statistics of the crime rate and suggest way forward.

Data presentation and analysis can be said to be the backbone of any kind of empirical research work. It is based on the analysis in which the research problem is expected to be answered. Thus, this chapter is primarily concerned with the presentation and analysis of the data obtained on the application of Death Penalty in Nigeria. The data was presented and analysed using simple statistical technique which includes frequency and percentage distributions.

Research design is the plan, structure and strategy of investigation conceived, so as to obtain answers to research questions to control variance. It includes an outline of hypothesis and their operational implications to the final analysis of data. It is the outline, the scheme and the typical

example of the operation of the variables when diagrams that outline the variables and their relation and togetherness are built or accomplished for research purposes, this is because; it studies small and larger population by selecting and studying a sample of the population to examine the distribution, incidence and interrelations among variables. Therefore, the researcher finds that the survey method will be appropriate for the work, since it enables the researcher to gather relevant information from the samples that will be selected out of the entire population of the study, which will give responses on the application of the Death Penalty in Nigeria.

The questionnaire used for this research was designed in such a way as to respond to the already defined research questions. As such, it consisted of two sets, one administered on convicts on death row and the other one administered on stakeholders involved in the administration of criminal justice System. For simplicity, most of the questions were close-ended questions; a close-ended question is defined as a question that comes together with a set of alternative answers from which respondents are to select one or more. The researcher limited the choices given to the respondents because it helps respondents to make quick decision and was easier to code.[224]

This study applied a common technique used in the research which is known as the Likert scale. The Likert scale provides a straightforward way of asking attitudinal information that is easy to analyze.[225] the target and accessible population of this study are the Judicial Officers, Legal practitioners, Prison officers, Nigerian Police and other judiciary officers involved in the Administration of Criminal Justice in Gombe, Yobe, Adamawa, Borno, Taraba and Bauchi State as well as the death row inmates awaiting execution from Prisons. Closed ended questionnaires

[224] Sekaran, 2003:239; DeVaus, 1996:86.
[225] Bryman, 2008:146; Brace, 2004:79

were used in this study while seeking answers to the research problems. The questionnaires were randomly distributed to the target group, Two thousand (2000) copies of the questionnaire were distributed across these states, out of which only one thousand five hundred copies (1500) were returned and administered correctly, while 500 questionnaires were administered on the death row convicts in these Prisons only 300 hundred were retuned, The questionnaires were self distributed to the respondents. The responses from the questionnaire were analysed and presented in tabular forms.

4.2 MEHOD OF DATA COLLECTION AND ANALYSIS

The data collected in this chapter was gathered personally by the researcher through the administration of questionnaires, personal interviews with the officers involved, field visits to courts, prisons and police headquarters. These have helped the researcher to make data analysis easily and draw conclusions about the questions at hand. In carrying out this research, questionnaires were administered to respondents so as to get more definite answers to the research problem. Also, the face-to-face interview was adopted due to the fact that some of the respondents could not speak or write in English, though a great number of scholars have conducted their research on the subject matter before, but no Secondary sources of data were used in this chapter, the data collected in this chapter is current and purely independent from other data used by previous researcher, it covers a period of ten years from 2000 to 2015, the aims of this is to add new information to existing one carried by previous researchers.

4.3 SUMMARY OF CONDEMENED CONVICTS IN NIGERIAN PRISONS FROM YEAR 2000 TO DECEMBER 2015.

From the table[226] below one will able to see the correct figures of Death row inmates in Nigerian prisons today[227] and the number of executions carried on in the past fifteen years as supplied by the office comptroller of Nigerian Prisons which read as follows;

TABLE (1):

S/NO	YEAR	MALE	FEMALE	TOTAL	NUMBER OF EXECUTIONS
1	2000	423	12	435	Nil
2	2001	306	9	315	Nil
3	2002	465	10	475	1
4	2003	495	11	505	Nil
5	2004	529	13	542	Nil
6	2005	646	15	661	Nil
7	2006	723	16	739	7
8	2007	724	11	735	Nil
9	2008	814	18	832	Nil
10	2009	837	10	847	Nil
11	2010	827	5	832	Nil
12	2011	966	16	982	Nil
13	2012	1038	21	1059	Nil
14	2013	1297	24	1321	4
15	Dec 2014	1641	28	1669	Nil

[226] Source. Statistic Unit, Nigerian Prison service Headquarters, Abuja. November 10th 2015

[227] As at the time of compiling this research, the number might have increase or decrease by now.

The above table covered a period from 2000 to December 20015 and from the table above it can be clearly seen that the number of death row inmates rose from 435 inmates in 2000 to 1669 in December 2014, An interview conducted by the researcher with comptroller General of Nigerian prisons indicated that the increase in the number is due to the fact that many Governors are reluctant to signed the death warrants or commute the death sentence to life imprisonment and that is why in 15 years only five executions were carried on. Also the data shows that the number of male convicts are incomparable to the female rate, this is attributed to some factors which the research will further reveal through the administration of the questionnaire on the death row inmates when asking questioning on age and Sex.

However, whatever the cause might be, the fact remains that retaining death penalty in Nigeria has not reduced the crime rates in this 15 years covered by this research.

4.4. A SUMMARY OF CONDEMNED CONVICTS IN NIGERIA PRISONS AS AUGUST 2015

Since the research is about Nigeria, it is very important to shade some light on the number of the death row inmates today with particular references to the northeast states, especially Gombe, Yobe, Bauchi, Taraba, Borno and Adamawa States, the area of this study.

TABLE (2: Death Row inmates in Nigerian Prisons as at August 2015.

S/NO	STATE	NUMBER OF AWAITING EXCUTION
1	ABIA	No available data
2	**ADAMAWA**	7
3	AKWA IBOM	**1**
4	ANAMBARA	Nil
5	**BAUCHI**	**3**
6	BAYELSA	Nil
7	BENUE	Nil
8	**BORNO**	39
9	CROSS RIVERS	38
10	DELTA	148
11	EBONY	Nil
12	EDO	73
13	EKITI	Nil
14	ENUGU	161
15	**GOMBE**	**12**
16	IMO	Nil
17	JIGAWA	18
18	KADUNA	110
19	KANO	88
20	KATSINA	61
21	KEBBI	38
22	KOGI	1
23	KWARA	46
24	LAGOS	173

25	NASARWA	Nil
26	NIGER	12
27	OGUN	192
28	ONDO	Nil
29	OSUN	Nil
30	OYO	Nil
31	PLATEAU	190
32	RIVERS	230
33	SOKKOTO	5
34	**TARABA**	**Nil**
35	**YOBE**	**Nil**
36	ZAMFARA	10
FCT	FCT	6
	TOTAL	**1662**

The above table is the current available data collected from the Nigerian prison service as at the time of compiling this work[228], may be the figure is higher now, however some states like Bayelsa, Anambara. Benue ,Ebony, Ekiti .Nasarawa ,Ondo, Osun, Oyo, Taraba and Yobe did not update their information with the prison headquarters Abuja as at the time of compiling this research, the targeted area of this research Gombe is not affected, the death row inmates in Gombe State is 12 inmates as supplied by the prison National Headquarters, Abuja, but a visit carried by the researcher to Gombe prison later revealed that the actual number of inmate are 13. one female and Twelve male awaiting execution. It can be observed from the above table that the highest number of death row inmates are in Rivers State with total number of 230 inmates while the lowest is recorded in Akwa Iboms State with only one (1) inmate, the above table is concerned with confirmed death row inmate who were sentenced to death by a courts of law in Nigeria, it is not part of this research to look into whether they have appealed their sentence or

[228] Source ; Research and Statistic office, Nigerian Prison Headquarters ,Abuja, Via letter 13/00/OPS/VOL1/377 dated 10th November 2015

not. Gombe state recorded only 13. The main point extracted from this table is that today 10th November 2015 we have 1669 death row inmates in our prison all awaiting execution as against 435 inmates in year 2000, this clearly shows that the retention of death penalty has not made any reduction the crime rate in Nigeria.

The researcher was unable to lay hands on the actual (number) statistic of how many inmates were executed from year 2000 to 2015 in Gombe State prison; this is due the poor system of filing and storing information in Gombe Prison. Therefore one cannot conclude accurately whether Gombe State prison has recorded any decrease in the number of Death row inmates over the period of 15 years. It took the researcher two months to get clearance from Headquarters of Nigerian Prison to visit the prisons affected by this research, apparently the Nigerian Prisons are not digitalized yet and therefore finding information is not an easy task. However the prison officers did a very good job by going into their archive to supply the researcher with the above data.

It can be seen from the data presented in table (1) and (2) above that the number of death row inmates is on the increase, from year 2000 to 2015 ,the number rose from 435 in year 2000 to 1669 in year 2015, almost 383.6 % percent increase and despite the increase in the number of convicts over the 15 years only 12 executions were carried on 15 years, whereas the largest portion are awaiting execution.

In the process of compiling this research and in order to collect accurate information the researcher interviewed[229] both the Comptroller General of Nigerian Prisons Abuja and the Deputy Comptroller Gombe Prisons in their offices to get their view on the application of Death

[229] On 2/12/2015 at Abuja and 10/12/2015 In Gombe Prisons.

Penalty, they suggested that the penalty should be abolished from our laws because it is not serving the purpose or alternatively the death penalty be commuted to life imprisonment, also suggested improving the prison service in order to house the increasing number of convicts.

4.5 DATA ANALYSIS

This questionnaire is designed and administered on death row inmates awaiting execution, distributed within the six states, Gombe, Bauchi, Yobe, Borno, Taraba and Adamawa States, currently there are about 104 inmates in this six states alone[230], exact copies were distributed to various prisons and all copies were returned duly answered, The empirical data gathered from the Questionnaire[231] administered for the purpose of this study is summarily presented and analysed in the following tabular forms.

Table 1: Sex Distribution

SEX	FREQUENCY	PERCENTAGES (%)
Male	95	91.3%
Female	9	8.6%
Total	**104**	**100**

Source: Administered Questionnaire February2017

The above table shows that respondents representing 91.3% with frequency of 95 are males, while only 9 respondents are female representing 8.6% of the total respondents. Thus, the frequency as well as percentage of male convicts on death row awaiting execution at these Prisons is higher than those of females. It further indicates that the potential of committing capital offences that attract Death Penalty is higher among males than females.

[230] Statics Units, Prison Headquarters Abuja December 2015

[231] The Questionnaire administered for the purpose of this study is attached as "Appendix 1"

Table 2: Age Distribution s

AGE	FREQUENCY	PERCENTAGES (%)
Below the age of 18 years	1	0.9%
18-30 years	55	39.2%
31-39 years	40	38.4%
40 years and above	8	7.6%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table shows that the commission of capital offences that attract the Death Penalty as per the age distribution of the convicts on death row indicates that commission of such capital offences were mostly dominated by the youths, who are of age bracket 18-30 years and from our observation, this is due to the fact that 55 respondents representing 39.2% of the convicts on death row in these Prison falls within the age group of 18-30 years. This is followed by 40 respondents representing 38.4 % who between the age of 31-39 years and only 8 respondent representing 7.6% of age bracket 40 years and above. The margin therefore establishes that crime rate within the youth is higher than any other group; this could be attributed to their strong physical nature, lack of experiences and proper education.

Table 3: Tribal Affiliation

Tribe	FREQUENCY	PERCENTAGES (%)
Hausa/Fulani	65	62.5%

Igbo	15	14.4%
Yoruba	9	8.6%
Others	15	10.7%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table shows that most of the convicts on death row in these Prisons are from the Hausa/Fulani tribe and this was due to the fact that 400 respondents representing 62.5% were indicated to belong to the Hausa/Fulani tribe. This is not surprising as this ethnic group is predominantly the largest among the inhabitants of these states and this is not to say that criminality is prevalent among them but because of their predominant population. However, 15 respondents representing 14.4% were indicated to belong to the Igbo tribe whereas 9 respondent representing 8.6% belong to Yoruba tribes while15 convicts representing 10.7% are from other tribes of the northern part, it should be noted that there are many tribes and ethnics groups in north. It is worth to note here death row inmates are usually exchangeable between prison, is not necessarily that only indigene are kept in their states, therefore in the process of filling this questionnaires the researcher met convicts that were transferred from the southern part of Nigeria to north.

Table 4: Religious Affiliation

Religion	**FREQUENCY**	**PERCENTAGES (%)**

Islam	62	59%
Christianity	41	39.4%
Others	1	0.9%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

Following what the data on tribal affiliations establishes in table 4 the religion affiliations table also shows that most of the convicts on death row are Muslims, probably from the Hausa/Fulani tribe and this was due to the fact that 62 respondents representing 59% were indicated to belong to the Islamic religion. This is perhaps because Muslims are predominantly the largest among the inhabitants of these states. However 41 respondents representing 39.4% were indicated to be adherents of the Christian religion. And only 1 respondent representing 09% are from traditional religion.

Table 5: Educational Background

Educational Qualification	**FREQUENCY**	**PERCENTAGES (%)**
Primary school	24	23.7 %
Secondary	7	6.7%
Tertiary	4	3.8 %
Quranic school (Alamajiri)	24	23.7%
Never attended any school	45	43.2%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table reveals that the convicts on death row in Prison were mostly those who never attended any school, as the above data indicates that 45 respondents representing 43.2% from among the 104convicts on death row in Prison never attended any school at all. However, this

indicates that the commission of capital offences that attract Death Penalty is much more likely to be prevalent among uneducated youth, another 24 respondents representing 23.7% are primary school certificate holder who share the same percentage with Quranic school leaver known as *Almaajury*, therefore one can comfortably state here that the level of crime among illiterates or semi illiterate is higher than among the educated ones because the table shows only 4 respondent attended tertiary school that only 3.8% which is the lowest.

Table 6: Marital Status

MARITAL STATUS	FREQUENCY	PERCENTAGES (%)
Single	40	38.4%
Married	34	32.6%
Widowed	10	9.6%
Divorced	20	19.2%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table reveals that the convicts on death row are mostly those who are single as the above data indicates that 40 respondents representing 38.4% from among the 104 convicts on death were not married at the time of committing the crime, while 34 respondents representing 32.6% are married and from their interview they said it is due to infidelity and jealousy However, as the data on age distribution correlates, the convicts on death row are mostly the youth and this indicates that the commission of capital offences that attract Death Penalty is likely to be prevalent among the youth who are single with no family responsibility .

Table 7: Means of livelihood before committing offence

Occupation	FREQUENCY	PERCENTAGES (%)

Business	8	7.6%
Civil servant	11	10.5%
Unemployed	85	81.7%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table reveals that most of the convicts on death row in these Prison are unemployed as the above data indicates that 85 respondents representing 81.7% from among the 104 convicts, while 8 respondent representing 7.6 % engages in business, whereas the civil servants numbered 11 out of 104 represent only 10.5 % However, the cumulative correlation of the data on age distribution, marital status and means of livelihood of the convicts on death row indicates that the commission of capital offences that attract Death Penalty is likely prevalent among the youth who are unemployed, uneducated and single with no family responsibility.

Table 8: Type of crime committed

crime committed	**FREQUENCY**	**PERCENTAGES (%)**
Murder/homicide	74	71.1%
Robbery	25	24.03%

Treason	0	0%
Others	5	4.8%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table reveals that the type of offences committed by convicts on death row were mostly murder or homicide followed by robbery as the above data indicates that 74 respondents representing 71.1 % from among the 104 convicts on death row were convicted for murder while 25 respondents representing 24.03% were convicted for robbery whereas only 5 convicts representing 4.8% are convicted for other offences. No one was convicted of treason in these prisons currently. However, this indicates that murder/homicide followed by robbery were the common capital offences that attract Death Penalty and from our interview with police officers that handle arrest of suspects, it is gathered that commission of such capital offences was due to the proliferation of light arms among the youths and the operation of gangs, poverty among others.

Table 9: Did you Appeal your conviction

Appeal	**FREQUENCY**	**PERCENTAGES (%)**

Yes	95	91.3%
No	9	8.6%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table reveals that majority of the convicts on death row, have appealed their conviction to the court of Appeal or supreme Court as the case may be, from an interaction with them it is revealed that they want to save their lives. The above data indicates that 95 respondents representing 91.3% from among the 104 row went on appeal against their conviction while 9 respondents representing 8.6 % were un able to exercise their right of appeal. However, as the data on the means of livelihood and level of education correlates, majority of the convicts on death row are mostly unemployed and uneducated and this indicates that they may lack the knowledge or the resources to appeal against their conviction, they are not enlightened to exercise their right of appeal. It has also been gathered from the interview with the inmates that many lawyers charge high fees to defend capital offenders.

Table 10: Did you know before committing the crime that the punishment is Death Penalty?

Awareness of Death Penalty	**FREQUENCY**	**PERCENTAGES (%)**
Yes	99	95.1%
No	5	4.8%

Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table shows that most of the convicts on death row were aware of the penal consequences of their crime, 99 respondents out of 104 representing 95.1% of the respondents indicated full awareness of the legal consequences of the act or omission that led to their conviction of the capital offence, whereas only 5 respondents representing 4.8% are unaware, this will lead us to the next question since most of the convicts are aware of the punishment why did they committed the crime?

Table 11: Why did you commit the crime?

Motive of committing crime	**FREQUENCY**	**PERCENTAGES (%)**
Self defence	30	28.8%
Provocation	45	43.2%
Influence of drugs/ alcohol	25	24.03%
Insanity	9	8.6%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table shows that most murder cases are due to provocation which constitutes 43.2% of the reasons for committing the crime out a total number of 104 respondents. While 30% of murder cases are caused by self defence in fighting, Alcohol constitute 24.3 % mostly occurs in clubs and fighting over girlfriends, amazingly the defence of provocation attracted only 43.2 % out of the reasons, claims insanity as defence representing 8.6%. If these defences are pleaded properly before the court, the death sentence may be set aside. Therefore if we are to arrange the

main causes for committing murder, provocation is the highest cause, it should be note here that most lawyers plead insanity as defence to exonerate their clients which proved to be only 8.6%

Table 12: How many years have you spend awaiting Execution?

years spend execution	FREQUENCY	PERCENTAGES (%)
2 years	14	13.4%
5 years	30	28.8%
8 years	40	38.4%
10 years and above	20	19.2%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table shows that the convicts on death row who have spent 10 years and above constitute only 19.2% whereas 40 representing 38.4% have spent 8 years, another 14 respondent representing 13.45 % are currently convicted, from the data presented earlier we have indicated that from year 2000 to 2015 the crime rate has rose by 300% and this questionnaire represent only 6 states out of 36 states in Nigeria. As for the reason for keeping these inmates all this while in custody, the comptroller General of prison an interview granted to the researcher indicated that most of these inmates are awaiting their Governors to sign their death warrants

Table 13: During your trial, were you represented by any counsel?

Representation by counsel	FREQUENCY	PERCENTAGES (%)
Yes	94	90.3%
No	20	19.2%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table reveals that the convicts on death row were represented by counsel during trial as the above data indicates that 94 respondents representing 90.3% from among the 104 convicts on death were represented by counsels. While 20 respondents representing 19.2 % were un able to engage legal representation. However, as the data on means of livelihood and level of education correlates, many convicts on death row are mostly unemployed and uneducated and this indicates and that they may lack the resources to hire a lawyer to defend them. It has also been gathered from the interview of some lawyers and prison waders that the convicts on death row are mostly those not opportune to be represented by highly skilled and competent lawyers during the trial, where a good counsel is engaged for the accused person his chances to escape death penalty are higher.

. **Table 14: If the answer to above table is YES who engaged the lawyer's service for you?**

Answer	**FREQUENCY**	**PERCENTAGES (%)**
My self	2	1.9%
Legal Aid counsel	96	92.3%
Human Right activists	5	4.8%
Charitable service	2	1.9%

Total	**104**	**100**

Source: Administered Questionnaire February 2017

From the above table 13 about 94 respondents stated that they were represented by counsel in court, however to assess the quality of service rendered to them, it is important to know who paid for the service? Almost 92.3% were represented by legal aid counsels, whereas 4.8% are represented by charitable legal services like the ones rendered by some senior advocates, Muslim lawyers Association and Christian Lawyers Association, F.E.D.A etc only 1.9% were able to engage a service of counsel of their choice, it has been gathered from an interview with the comptroller general of prisons Abuja, during compiling this research that most lawyers from Legal Aid are new graduate in service (NYSC) with little or no experience in the field, this will certainly have its negative impact on the outcome of the trial.

Table 20: Do you regret committing your crime?

Repentance toward the crime committed	**FREQUENCY**	**PERCENTAGES (%)**
Yes	100	96.1%
No	4	3.8%
Others	0	0%
Total	**104**	**100**

Source: Administered Questionnaire February 2017

The above table reveals that 100 out of 104 of the convicts on death row representing 96.1% indicated a sense of regret for the crime they committed as 4 respondents representing 3.8% indicated no regret at all their crime; their reasons when interviewed are related to revenge and adultery cases.

4.6 Data analysis related to Judges, Lawyers, Police and officers in the Administration of Criminal Justice Sector in Gombe State.

Judges, lawyers, police, prison officials and officers entrusted with the administration of criminal justice system in Nigeria are part and parcel of this research, therefore in order to get their input, this research questionnaire was designed in simple form and administered on all of them, the aim this questionnaire is to see the level of efficacy of retaining the application of death penalty in Nigeria or otherwise, the challenges they are facing in carrying their duties, the possible ways to improve the standard of Administration of Criminal Justice in Nigeria to meet the international standard. The questionnaire were mainly distributed in this six states earlier mentioned, there are number of High Court Judges in this States Judiciary, the Attorney Generals and Commissioner of Justice, the Commissioners of Police, the Deputy Comptrollers of Prison and members of Nigerian Bar Association who are engaged on daily basis either prosecuting of defending accused person. Due to the fact that the research has narrowed to these six states, 300 questionnaires were distributed but only 275 were returned, many of those who returned their questionnaires without difficulties were the legal practitioners, the Commissioner of police. Comptroller of prisons, they have rendered the researcher maximum assistance and cooperation, judges were last to return theirs, as reaching most of them was difficult, those in Gombe gave their maximum assistance.

The participants of this questionnaire were assured that their identity will not be revealed, therefore table (1) was made optional and the Questionnaire is designed as follows:

Table (1) Name ... .optional

Age – .....optional

Religion ..... optional

Tribe ..... optional

Rank ..... optional

Table 2: ON THE YEARS OF SERVICE IN THE FIELD OF ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA?

ANSWER	**FREQUENCY**	**PERCENTAGES (%)**
2-5 years	150	54.5%
6-10 years	100	36.3%
10 years and above	25	9.0%
Total	**275**	**100**

Source: Administered Questionnaire February 2017

The above table reveals that the diverse experience of the stakeholders involved in the administration of criminal justice were well learned and experienced in the field, with 36.3% having ten years post experience in the felid, this a good indication that those involved in the administration of criminal justice are well trained staffs with good experience in the work, therefore one can reliably states here that the chances of committing miscarriage of justice is next to zero 0%

Table 3: DO YOU SUPPORT THE RETENTION OF DEATH PENALTY IN NIGERIA?

Answers	FREQUENCY	PERCENTAGES (%)
Yes	245	81.6%
No	30	10%

The above table shows that most of the respondents are in favour of retaining the application of death penalty in Nigeria. Almost 98.1% are in support while only 1.8% suggested they are not.

Table 4: IF THE ANSWER TO THE ABOVE QTABLE (3) IS (YES) WHAT ARE YOUR REASONS FOR SUPPORTING THE DEATH PENALTY?

Answer	FREQUENCY	PERCENTAGES (%)
A. It is effective, legal and serves as deterrence to others	25	9%
B. Is based on religion	50	18.1%
A & B	205	74.5%

TOTAL	275	100

Source: Administered Questionnaire February 2017

The above table shows that those in support of retaining the death penalty are higher with 74.5% and there reason is based on their faith, this could be due to the geographical location of the research which is northern Nigeria, it is however interested to note that both Muslims and Christians shared same views on the issue. However, as majority of the respondents favours the retention of the Death Penalty, it may be deduced that in Nigeria, retention of the application of Death Penalty is still the prevalent view and a stumbling block that kicks the abolition movement gaining ground at the international community.

Table 5. IF YOU ANSWER TO TABLE (3) IS (NO) WHAT ARE YOUR REASONS?

No	Answer	Frequency	Percentage
1	death penalty is barbaric, uncivilised and does not serve it purpose today	0	0%
2	Is just for poetical reasons, Nigeria should follow international community	10	33%
3	Is personal view, killing is bad generally	0	0%
4	Is based on my faith, foreignness is better.	2	7%
5	All of the above	18	60%
	Total respondents	30	100

Source: Administered Questionnaire February 2017

The above table is administered on those who suggested that death penalty should be abolished, 60% said is based on all of the above reason, and it is worthy to note here most of those respondents are from Christian faith.

Table 6: DO YOU THINK THE DEATH PENALTY IS AN EFFECTIVE METHOD IN DETERRING CAPITAL OFFENDERS FROM COMMITTING FURTHER CRIMES?

ANSWER	FREQUENCY	PERCENTAGES (%)
Yes	270	98.1
No	5	1.8%
Total	**270**	**100**

Source: Administered Questionnaire February 2017

The above table shows that the stakeholders involved in the administration of criminal justice by majority support the retention of the Death Penalty in the Nigerian criminal justice sector also sees its effectiveness in deterring culprits from further committing similar offences. It is gathered that 270 respondents representing 98.1% from among the police, state counsel and the judges in Gombe State were of the view that Death Penalty is an effective method of deterring capital offenders while on the other hand, 5 respondents representing 1.8% were of the opinion that Death Penalty does not serve as a deterrent to capital offenders. However, we are of the view that determination of the effectiveness of the Death Penalty in deterring capital offenders in Nigeria is not an easy task in view of the deteriorated conditions of the criminal justice sector and the widespread prevalence of social imbalance such as unemployment, drug abuse, lack of education, etc., most especially among the youth with potential of criminality.

Table 7: ON WHETHER NIGERIA SHOULD JOIN INTERNATIONAL WORLD AND ABOLISH DEATH PENALTY?

ANSWER	FREQUENCY	PERCENTAGES (%)
YES	40	13.3
NO	250	83.3%
Not decisive	10	0.3%
Total	**275**	**100**

Source: Administered Questionnaire February 2017

The above table shows that the stakeholders involved in the administration of criminal justice majority favoured the retention of death penalty with 83.3% advising Nigeria not to join the international world in its efforts to abolish the punishment, it should be noted the figure is not surprising in the light of geographical location where the research is conducted, Muslims are the majority, however some respondents favoured it.

Table 8: ON WHETHER NIGERIAN PRISONS ARE WELL EQUIPPED TO CONTAIN LIFE SENTENCE PRISONERS?

ANSWER	FREQUENCY	PERCENTAGES (%)
Yes	75	27,2%
No	200	72.7%
Total	**275**	**100**

Source: Administered Questionnaire February 2017

The above table shows that majority of the stakeholders involved in the administration of criminal justice decry the condition of prisons and custodial institutions in meeting the requisite standard that may rehabilitate convicts, in that, 200 respondents representing 72.7% were of the view that Nigerian prisons are not equipped enough to contain life sentence prisoners, although relatively 9 respondents representing 27.2% are contented with the condition of the prisons as it is today. Thus, as earlier suggested, the prisons are among the aspects of the criminal justice sector that must first be reformed and rehabilitated to meet international standards before any move for acceptance of life imprisonment instead of Death Penalty should be entertained.

Table 9: WITH THE INTRODUCTION OF SHARIA LAW IN SOME NORTHERN STATES, WHETHER *DIYA (*BLOOD MONEY) SHOULD BE INTRODUCED IN LIEU OF DEATH PENALTY AND LIFE IMPRISONMENT?

ANSWER	FREQUENCY	PERCENTAGES (%)
Yes	230	83.6%
No	45	16.3%
Total	**275**	**100**

Source: Administered Questionnaire February 2017

The above table shows that 83.6% of the respondent are inclined towards accepting *Diya* blood money against death penalty , this is not surprising because the 6 states where the research is conducted is majority muslim with some Christians whose opinion represent 16% in Taraba, Adamawa, Borno and Gombe. Some respondent displayed total ignorance of the concept of *Diya* completely.

Table: 10. **HOW DO DESCRIBE THE WAY AND MANNER IN WICH CAPITAL OFFENCES ARE TRIED IN COURTS**

ANSEWR	FREQUENCY	PERECTAGE
EXCELLENT	10	3%
POOR	50	16.6
VERY POOR	240	80%
TOTAL	300	100%

Source: Administered Questionnaire February 2017

It is very unfortunate that 80% of the respondent described the trials in our courts are very poor whereas only 3% did not see any good in it.

TABLE: 11**. WHAT IN YOUR OPINION IS CAUSING THE POOR PERFORMANCE OF ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA**?

S/NO	ANSEWRS	FREQUENCY	PERCENTAGE
1	Complicated nature of the system.	50	16.6%
2	The Judges and court	10	3.3%
3	incompetents lawyers and Police	29	9.6%

4	Corruption in the system	100	33.3%
5	All of the above	111	37%
	Total	300	100

Source: Administered Questionnaire February 2017

It is quite astonishing that 37% of the respondent blamed the poor performance on all of the above reasons. However the Nigerian Police being the body responsible for apprehending criminals carries 33% of the blame, on the poor performance, this may be due to the fact that they responsible for maintaining law and order in the society. Lawyers are not left behind 9.6% of the blame is on them due to their attitudes in delaying cases in court by moving flimsy applications and un necessary adjournment to the detriment of the person standing trial, however the data further present the judiciary in better shape with only 3, 3% of the blame, therefore one can conveniently say from the figure above 3.3% that our court are still the last hope of the common man.

4.7 CONCULUSION

While this chapter offered a presentation of data analysis on the Administration of Criminal Justice in Nigeria as it relate the application of death penalty in Nigeria, the next chapter will highlight the observation discovered in the process.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 INTRODUCTION

This chapter provides for the concluding segment of this research work and it encompasses summary, observations, recommendations and bibliography.

5.2 SUMMARY

The first chapter of this research work dealt with the statement of the research problem of this dissertation as to whether the Death Penalty is effective and does it serve its purpose or not? The research work has indicated that the Death Penalty has not been serving its purpose and that the

world is now moving toward total abolition of the Death Penalty for all crimes. Nigeria has signed the United Nation's Resolution 62/149 and 63/168 calling for moratorium of the use of the Death Penalty, but has not domesticated it into its laws. The literature review has clearly underlined the problems that need to be addressed. The Chapter also showed why the research is justified in the light of the above problems. The scope of the research was narrowed to Gombe State in particular as a case study with references to Bauchi, Yobe, Borno, Taraba and Adamawa States. The second chapter contain the concept of the Criminal Justice and its dimensions, this include an overview of the legal frame work for the Criminal Justice System appraising the penalty under the Military regime, the Penal Code, the Criminal Procedure Code, The Criminal Procedure Act, the Sharia Penal Laws, the offences that attracts death penalty in Nigerian and methods of execution.

In chapter Three the research presented the argument for or against the death penalty, presenting both arguments based on its merits and Nigerian concern over the penalty and finally provided a general assessment of the two arguments.

Chapter Four is the empirical aspect of the thesis, where the researcher conducted a field research by visiting prisons, distributing questionnaires, conducting face to face interviews with the stake holders in the Administration of Criminal justice System in Nigeria.

Finally in chapter 5 contain the summary, observation and recommendation. The finding indicated that most of those who participated in the study are in favor of the application of Death Penalty.

Finally, in Chapter Five, the research work concludes with key findings and recommendations. The research concluded that the application of the Death Penalty in Nigeria as it is, presently, is

ineffective, ill-managed and of little or no use. The researcher however is not recommending the total abolition of the Penalty.[232] If the Death Penalty must be maintained, it should be carried out promptly to ensure that it serves the main objectives of its enactment. It is worth to note that what is happening to death row inmates in Nigerian prisons today is a total violation of the fundamental human rights of the convicts. Keeping death row inmates for years in fear of death is inhuman, illegal and unacceptable by all international humane right.

5.3 FINDINGS

Flowing from the above chapters, the following key findings are hereby noted:

The first finding in this research is that, the application of the Administration of Criminal Justice Act 2015 has not been extended to the state High Courts in the Gombe State or the north eastern states. The applicable law is the Penal Code and Criminal Procedure Code.

The preamble of the ACT READS; AN ACT TO MAKE PROVISIONS FOR THE ADMINISTRATION OF CRIMINAL JUSTICE AND FOR RELATED MATTERS IN THE COURTS OF THE FEDERAL CAPITAL TERRITORY AND OTHER FEDERAL COURTS IN NIGERIA,2015 therefore, the High court's in Gombe State and other states in the northeast are still relying on the Penal Code and Criminal Procedure Code in trying Capital cases.

It has also been found that despite the retention of the death penalty in Nigeria, crime rate has not been reduced, it can be seen in Table (1) and (2) [233]of the data collected from the Nigerian prison service which indicated that from 2000 to December 20014, the crime rate has not reduced, on the contrary the number of death row inmates rose from 435 inmates in 2000 to 1669 in 2014, almost more that 300% increase, thereby casting doubt on the efficacy of this penalty in

[232] No Muslim can deny that Death Penalty is recommended by the Holy Quran in many chapters.
[233] Chapter IV of this research.

Nigeria, therefore if the aim of retaining the death penalty is deterrence ? Then this research has proved practically that this aim has failed. The data presented in table (1) and (2) of Chapter (vi) shows that only 12 executions were carried in 15 years, despite the increase in the number of death row inmates.

It has also been found that, the final approval or order on the execution of any convict is within the powers of the state executive Governors and not the judge who passed the sentence[234], yet many State Governors are reluctant or unwilling to sign death warrants for either political reasons or religious views. Consequently executions have stopped presently and this has led to the current increase in death row inmates in Nigerian Prisons, this can be seen in table (1) & (2) of chapter VI, where the number of inmates rose from 435 inmates in year 2000 to 1,669 in 2014. The nature of the long and complicated procedure prescribed by both the Criminal Procedure Code[235]of the North and Criminal Procedure Act[236] of the South has prolonged the agony of many death row inmates, thereby spending many years on death row cells.

From the above research, it is clear that the international community is moving toward total abolition of capital punishment for all crimes. It has been found that the whole argument on the abolition of the Death Penalty is alien to African traditions and the Nigerian Criminal Justice System, as Death Penalty has been practiced everywhere in Africa for centuries,[237] this argument must be seen as a recent western movements which started after World War II in 1945 on the

---

[234] Section 294(4) of the Criminal Procedure Code, Cap C41, LFN (2004), stated as follows: *"After a sentence of death has been pronounced in the High Court the presiding judge shall, as soon as may be convenient forward to the minister a copy of the trial proceeding including the Judgment and sentence together with a report in writing containing any recommendation or observation on the case which he thinks fit to make***."**

[235] Section 249 Criminal Procedure Code, Cap C41, LFN (2004).

[236] Ibid Section 371-375

[237] Hood, R. "*The Death Penalty: A worldwide Perspective*", Oxford, (2002), p. 18

floor of the United Nations with the introduction of Resolutions 62/149 of December 2007 and 63/168 of 2008 calling for moratorium on the use of the Death Penalty.

The researcher has found from the field visit he conducted and the face to face interview he had with the Deputy Comptroller General of Prisons Abuja that the Nigerian prisons are not well-equipped to serve as rehabilitation centers, due to many logistic problems and that most Nigerian Prison were built in the 60th or thereabout with little or no facilities to serve as prisons, they have poor record system, no portable water, no proper feeding, no proper medical facilities, in fact due to poor recording system the Nigerian Prison headquarters Abuja were un able to supply accurate data or number of death row inmates in some states, as can be seen in table (1) e.g. like Taraba, Yobe, Ondo, Osun, Oyo, Nasarawa, Ekiti, the researcher had to visit the prisons affected personally to get the accurate number of death row inmates, the this is serious problem indeed. The issue of death penalty is an international issue; there is no excuse why the Headquarters of Nigerian Prisons Service Abuja does not have the accurate number of death row in its prisons? The Director research and statistics of Nigeria Prisons Abuja blamed this on the poor system of filling records which is still done manually; he told the researcher that they are not yet digitalized; all information's are handled via the old methods of filing.

It has also been found that some death row inmates (about 19.2%) interviewed have spent more than 10 years awaiting execution. The commission of capital offences that attract Death Penalty is much more prevalent among the male, uneducated, and unemployed, from poor background youth than the elderly ones; female recoded the lowest percentage in the research. This raises concern that the relevant authorities and stakeholders involved in the Administration of Criminal Justice must do a lot to address the issue of youth's potential for criminality of which a reform of the Criminal Justice Sector is long overdue in Nigeria.

It has also been found that trial of capital offences in Nigerian courts are very expensive, very slow and take many years to the determent of the accused person and the large majority of those standing trial cannot afford the service of a counsels whereas the Legal Aid Counsel in Gombe state is poorly funded and cannot provide legal service for people charged with capital offences.

It has also been found that the concept of Islamic Law of paying blood money "diya" has been widely accepted by many respondents and convicts on the death row list.

It has also been found that the abolition of Death Penalty in Nigeria is as well the abolition of HUDUD under the Sharia law, which is practically difficult if not impossible, due to large number of Muslims in Nigeria, in another word abolition of death penalty amount to fighting the sharia from the back door.

5.4 RECOMMENDATIONS

In view of the above findings, the researcher hereby recommends to the stake holders in the field of Administration of Criminal Justice System and Nigerian Government at all levels the following;

In our view, there is urgent need for total reforms of the entire Criminal Laws[238] guiding the application of death penalty in Nigeria, these laws should be reviewed, properly examined and if possible unified in one single law in order to make justice delivery more speedy and effective. The Criminal Justice System as it is now perpetrates agony and injustice on all the stake holders and the death row convicts in particular who are being kept in devastating conditions in the prisons. The essence of the Criminal Justice System would be attained without the Government occasioning injustice to its citizens by keeping them behind the bars indefinitely.

[238] The Penal Code, the Criminal Code, the Criminal Procedure Code, the Criminal Procedure Act and the Administration of Criminal Justice Act 2015.

It is recommended that The Criminal Justice Act 2015 presently applicable to High Courts in the FCT should be made applicable throughout the Federation and applicable to all courts.

The Nigerian legislatures has a role to play, they can reduce the number of offences that attract the Death Penalty, because progressive restriction on the number of the offences will lead to a society free of this penalty.

We recommend that the judiciary must be re-positioned, well-equipped and judges responsible for the trails of capital offenders must be well trained and knowledgeable in order to deliver sound judgments. The lives of the accused persons depend on their pronouncements because technically speaking they can grant life and take life with their judgments. A judgment rightly or wrongly delivered remains a valid judgment, unless set aside on appeal. Therefore, the authorities concerned, e.g., the National Judicial Service Commission (NJSC) must not neglect this point. The whole issue of death penalty arises from a Death Sentence passed by a judge on a convict; otherwise no debate will arise on the issue. Therefore, this point must be carefully addressed; otherwise the problem will not be solved.

We recommend that persons accused of capital offences should be allowed to enjoy the presumption of innocence under Section 35 of the 1999 Constitution by allowing them to go on bail pending appeal because it will decongest the prisons, thereby reducing the burden on the Government. It is our considered view that capital offenders should not be denied this constitutional right of bail. Because the essence of bail is to secure the attendance of the accused person during his trial in as much as it is safe courts should grant them bail.

We also recommend that the Nigerian Police should also be trained and paid well, that will go a long way in minimizing the miscarriage of justice occasioned with the trials of capital offenders.

We also recommend that executive Governors should be advised to carry on with their constitutional responsibility and sign the death warrants before them, the current ugly situation death row inmates' faces is due to their reluctance in signing death warrants, we also recommend on" humanitarian ground" that all death row inmates who have spent more than ten (10) years on death row list should be commuted to life imprisonments because they have suffered enough. It is within the powers of the executive Governors to do so, as it will not violate any constitutional provision.

The Government should fund the Legal Aid Council, provide them with logistic and encourage them to defend capital offender, the private Bar should also be encouraged to handle murder cases free of charge, The trial of capital offences should be made speedily and must be conducted within a reasonable time, from the date of arrest to the date of judgment. This will go a long way in eliminating the horrible experiences of death row inmates in Nigerian prisons today.

The Government should try and create employment for the youth, provide them with proper education; the research has proved that crime rate is higher among the unemployed. Uneducated youth, therefore if illiteracy, poverty and unemployment is illuminated, automatically crime rate will drop.

It is also recommended that, due to the large number of Muslim population in Nigeria, it is very important while considering this argument against the Death Penalty to examine the sharia point of view especially the concept Islamic law of *"Diya" (*blood money) we recommend that it should be adopted as part of our laws. If Diya is introduced in our laws, it can achieve the target of saving lives and bring balance between the retentionist and abolitionists on the Death Penalty

in Nigeria. If Diyya is paid the life of the convict is saved and the deceased family will be adequately compensated and the family of the victim in murder cases should be allowed to have a say in the murder trial. Presently only the state has a say in murder trials, the family of the deceased are not heard or compensated. Some may argue that some convict are poor and cannot pay the Diyya? This is another topic for another thesis, but the main aim is to save the life of the convict, that is why the researcher suggested it, it save life, saves money for the state and provide compensation for the family of the deceased.

Most if not all Nigerian prisons were built around 1960 or thereabout, they lack basic facilities to call them prisons, we suggest that Nigerian prisons should be adequately funded and properly maintained. Keeping inmates in degrading and inhuman conditions is not acceptable by all international standards. Death row inmates are human beings they must be well-fed, provided with decent accommodation, clean water and perhaps schools and other social amenities should be made available in prisons.

Where the execution of the death penalty is inevitable punishment, such execution should be done as the last option, after all chances of appeal must have been exhausted by the convict. In other words, it is our humble view that all death sentences must have been affirmed on appeal by the Nigerian Supreme Court which should be the final verdict on execution. Where the convict cannot afford the bill the Government should assist him, this will eliminate the chances of executing innocent people, and will save many innocent persons wrongly convicted. , alternatively if the government cannot proceed with the execution of convicts, it is our candid view that the utility of the Death Penalty ought to be revisited with abolition

Finally, though as it has been earlier stated in this research, as it is today, the application of death penalty is ineffective, and has not reduced the crime rate in Nigeria, yet it is the humble

view the researcher that Nigeria should retain the application of death penalty in its laws, Nigeria is not fully prepared to join the wagon of abolitionist, Nigeria does not have the facilities to keep death row inmates for life, soon if the rate of crime continue the way it is, Nigerian prisons will not be able to contain the large number of inmates.

Ratifying the United Nation Resolution doesn't not make Nigeria bound by the resolution, every country or society has its own peculiar structure, set up and nature, therefore Nigeria is not bound by this resolution, Nigeria is an independent and sovereign nation, it should not allow other nations to mislead it, those advocating for the abolition of death penalty did so after careful study of what their nation needs, Nigeria doesn't share same problems with this nation, Nigeria doesn't have the level of education they have, it did not reach the level of civilization they are in now, so it should not imitate them blindly, otherwise the consequences is fatal. That is the final conclusion of this research.

BIBLIOGRAPHY

BOOKS

Abu Zahara, *Al-Jarima Wal Uguba fil Figh al-Islamy,* Dar Al-Fikir Al-Arabi, (1976)

Abu Zahara, *Al-Jarima Wal Uguba fil Figh Al-Islamy*, Dar Al-Fikir Al-Arabi, p. 100.

Beccaria, C. *On Crime and Punishment*, Manchester, London (nd)

Doherty, O. *Criminal Procedure in Nigeria,* Blackstone Press Ltd., Britain (1990)

Obilade, A. O. *Nigerian Legal System,* Sweet and Maxwell, London (1977)

Okonkwo and Naish, *Criminal Law in Nigeria*, Sweet and Maxwell, London (1976)

Schabas, A.W. *The Abolition of Death Penalty in International Law*, Cambridge, (1997)

Ladan, M. T. *Introduction to Jurisprudence, Classical and Islamic*, Malthouse Press Limited, (2010)

Chenwi, L. M. *Towards the Abolition of the Death Penalty in Africa: A Human Rights Perspective*, University of Pretoria Press, (2005)

Hood, R. *Introduction-The Importance of Abolishing the Death Penalty in Council of Europe*, Death Penalty: Beyond Abolition (2004)

Reid, S.T. *Crime and Criminology*, Harcourt Brace College Publishers, (1994)

Dambazau, A. B. *Law and Criminality in Nigeria,* University Press Plc. Zaria (1994)

Kant. I *The Philosophy of Kant*, James Macllehouse and Sons, Glasgow (1891)

Beccaria, *On Crime and Punishments*, Paolacci, H. (trans) Bobbs Merill, Indianapolis (1963)

Hodgkinson. *Capital Punishment: Improve or Remove it?* In: Peter Hodgkinson and William A. Schabas (eds.) *Capital Punishment: Struggles for Abolition*, Cambridge University Press (2004)

Schabas, *The Abolition of the Death Penalty in International Law* 1 (1997).

Chukkol, K.S. *The law of Crime in Nigeria*, Ahmadu Bello University Press Limited, Zaria-Nigeria, (1989)

Al-jaza'eri,*Minhajull Muslim*, Dar Alfikir Alarabi, (1999) 1st Edition

Hood, R. *The Death Penalty: A Worldwide Perspective*, Oxford (2002)

Roger Hood and Carolyn Hoyle, *The Death Penalty: A World-wide Perspective*, 4th ed. (Oxford, Oxford University Press, 2008)

Daniel S. Nagin and John V. Pepper, eds., *Deterrence and the Death Penalty* (Washington, DC, National Academies Press, 2012)

Craig Haney, *Death by Design: Capital Punishment as a Social Psychological System* (New York, Oxford University Press, 2005)

Schabas, The Abolition of the Death Penalty in International Law 1 (1997).

Bedau, H. A. *An Abolition Survey of Death Penalty in America Today*, in: Hugo Bedau and Paul Casell (eds), Debating the Death Penalty, Oxford University Press (2004)

Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, available from www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx.

The Death Penalty Project, The Inevitability of Error: The Administration of Justice in Death Penalty Cases (London, 2014), available from www.deathpenaltyproject.org/news/1795/1795/.

ARTICLES

Roger Hood, "*Abolition of Capital Punishment in the United Kingdom*", paper presented at the workshop Global Survey on Death Penalty Reform, Beijing, 25-26 August 2007

Chukkol, K. S. *Revisiting the Death Penalty*, A Paper submitted to the roundtable discussion at the Nigerian Institute of Advance Legal Studies, Lagos, August 10th, 2010

Adeyemi, A. A. in his Keynote Address to the one-day round table on "*Revisiting the Death Penalty*", held at the Nigerian Institute of Advance Legal Studies, Lagos, delivered on August 10, 2010.

Fine, T. *Moratorium 2009: An International Dialogue Towards a Ban on Capital Punishment*, Columbia Human Rights Law Review (1999) Vol. 30

Roger Hood, *Towards Global Abolition of the Death Penalty: Progress and Prospects*, A Lecture delivered at The Death Penalty Project In the Hall of The Inner Temple on 21st January 2010, University of Oxford

Uweru, B. *The Efficacy of Death Penalty: An Analysis of a Survey of Women Hard Drug Traffickers in Benin and Warri, Nigeria,* in Ajibola, B., Kalu A. U. and Osibanjo Y. (eds.), *Narcotics: Law and Policy in Nigeria,* Federal Ministry of Justice Law Review Series, Lagos 1990, Vol. 8

Adeyemi, A. A. *Death Penalty in Nigeria; The Criminological Perspective,* Nigerian Current Law Review, (1988/91)

Jeff Jacoby, *When Murderers Die Innocent Lives*, The Boston Globe, September 28, 2003

Bedau, et al., *Miscarriages of Justice in Potentially Capital Cases*, 40 Stanford L. Rev. 21, 22-23 (1987).

Jeffrey Fagan and Daniel Nagin, "*Model Uncertainty and the Deterrent Effect of Capital Punishment*", American Law and Economics Review, vol. 7, no. 2 (2008)

Franklin Zimring, Jeffrey Fagan and David T. Johnson, "*Executions, Deterrence and Homicide: A Tale of Two Cities*", Journal of Empirical Legal Studies, vol. 7 (2010)

REPORTS

Amnesty International Report on Death Penalty, 2015.

Amnesty International, *Nigeria: 'Waiting for the Hangman*,' p. 23, AFR 44/020/2008, Oct. 21, 2008.

Royal Commission on Capital Punishment, United Kingdom, 1953

Mills, H. "Death Row Prisoners Escape the Gallows," The Independent, Nov. 3, 1993

Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Report of the Secretary-General, UN Doc. E/2010/10

APPENDIX

EUROPEAN CONVENTION ON HUMAN RIGHTS CONCERNING THE ABOLITION OF THE DEATH PENALTY

Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty

Article 1

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law."

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Article 2

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime."

2.African countries that have abolished the Death Penalty include: Cape Verde (1981), Mozambique (1990), Namibia (1990), Sao Tome & Principe (1990), Angola (1992), Guinea Bissau (1993), Seychelles (1993), Mauritius (1995), South Africa (1997), Cote D Ivoire (2000), Rwanda (2007), Burundi (2009). *De facto* Abolitionist countries include: Algeria (1993); Benin (1993); Burkina Faso (1988); Central African Republic (1981); Congo (1982); Eritrea (1989); Gabon (1981); Ghana (1993), Gambia (1981), Kenya (1987); Madagascar (1958); Malawi (1992), Mali (1980); Mauritania (1989); Morocco (1993); Niger (1976); Swaziland (1989); Togo (1979); Tunisia (1991); Tanzania (1995); Zambia (1997).[239]

3. 10 African countries have ratified the *Second Optional Protocol* to the ICCPR on the Abolition of the Death Penalty. Cape Verde (2000), Djibouti (2002), Guinea-Bissau (2000), Liberia (2005), Mozambique (1993), Namibia (2004), Rwanda (2008). Sao Tome & Principe (2000), Seychelles (2004), South Africa (2002). Nigeria is not a party to the protocol.[240]

4. Questionnaire on death row inmate: a study of Gombe, Bauchi, Yobe, Borno, Taraba and Adamawa States prisons

[239] www..United Nation.org last vested on 18/12/2015
[240] Professor Epiphany Azinge, SAN Director General Institutes of Advance Legal Studies, Lagos

5. Questionnaires on the stake holders (Judges, Lawyers, Police and Prisons officials) in the Administration of Criminal justice system in