

Research Article

Capital Punishment in Limbo: The Illegality of Prolonged Death Row Incarceration in Nigeria

Ituah Imhanze , Cajetan Osisoma 

Litigation and Dispute Resolution, KENNA, Lagos, Nigeria

Abstract

Capital punishment remains legally permissible in Nigeria for offences such as murder, armed robbery, treason, terrorism, and certain offences under the military law. However, in practice, executions have almost stopped because the implementation of death sentences requires executive authorization – issuance of an execution warrant by the President or the Governor of a state, depending on whether the offence is a federal or state offence. The consistent reluctance of the President and the Governors to sign death warrants has created a significant population of death row inmates, many of whom remain incarcerated for prolonged periods without the prospect of execution, commutation, or pardon. This situation has generated a paradox in the administration of criminal justice system in Nigeria: while courts continue to impose death sentences in accordance with the criminal laws, the executive authorities effectively suspend their execution through executive reluctance and/or inaction. This article critically examines the legal, constitutional, and human rights implications of the persistent non-execution of death sentences in Nigeria. It argues that the prolonged detention of prisoners on death row without execution, commutation, or pardon raises serious concerns under constitutional guarantees and international human rights norms, particularly regarding the prohibition of cruel, inhuman, or degrading punishment or treatment. Drawing on Nigerian constitutional law, judicial precedents, international human rights standards, and comparative perspectives from other jurisdictions that have experienced *de facto* moratoria on executions, the article interrogates whether the continued imposition of death sentences in Nigeria remains legally and morally defensible. It proposes a set of legal and policy reforms, including legislative rethinking of capital punishment, structured commutation mechanisms, and judicial reinterpretation of prolonged death row incarceration. Ultimately, the article argues that Nigeria must either meaningfully implement the death penalty within constitutional and human rights limits or move toward its formal abolition.

Keywords

Capital Punishment, Death Penalty, Death Row Incarceration, *De Facto* Moratorium, Death Row Phenomenon, Human Rights

*Correspondence: Ituah Imhanze (iimhanze@kennalp.com), Cajetan Osisoma (cosisioma@kennalp.com)

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1. Introduction

Capital punishment¹ remains one of the most controversial aspects of the criminal justice systems across the globe. While many jurisdictions have abolished the death penalty either in law or in practice, several countries continue to retain it for the most serious offences. Nigeria belongs to this latter category, maintaining capital punishment in its criminal laws for grave and serious crimes such as murder, armed robbery, treason, terrorism, and certain military offences. Nigerian courts impose the death penalty where such offences are proved beyond reasonable doubt, reflecting the legality of capital punishment in Nigeria's criminal justice system.

Notwithstanding its continued legality in Nigeria, the implementation of the death penalty presents a striking paradox. Under Nigerian law, the execution of a death sentence cannot be carried out unless the President or the Governor, as the case may be, signs the death warrant authorizing the execution. In practice, however, Nigerian executives have shown persistent reluctance to sign such warrants, and this has effectively produced a *de facto* moratorium on executions in Nigeria, even though capital punishment remains legally sanctioned under the country's criminal justice system.

This contrasts sharply with the willingness of the various military administrations in Nigeria to execute offenders sentenced to death by courts and/or military tribunals. During Nigeria's military era (1966-1979; 1983-1999), executions were not only lawful but frequently and swiftly carried out as an instrument of state control, discipline, and deterrence. The military governments demonstrated a marked willingness, and often urgency, in implementing death sentences.²

The consequence of the unwillingness and reluctance among civilian Presidents and Governors to carry out executions of death sentences is the emergence of a large and growing population of inmates on death row across correctional facilities in Nigeria. Many of these prisoners remain incarcerated under sentence of death for extended periods without a clear indication as to whether their sentences will be executed, commuted, or otherwise pardoned. This phenomenon raises profound legal, constitutional, and human rights questions. The indefinite suspension of executions may undermine the principles of certainty and finality in criminal punishment, while the prolonged psychological and physical conditions associated with death row incarceration potentially amount to

cruel, inhuman, or degrading treatment or punishment.

The dilemma presented by prolonged death row incarceration has received considerable attention in comparative constitutional and human rights jurisprudence. Courts in several jurisdictions have recognized that extended delays between sentencing and execution may violate fundamental rights, particularly where such delays subject prisoners to severe mental anguish or uncertainty. International human rights bodies have similarly expressed concerns about the compatibility of prolonged death row detention with international standards governing humane treatment of prisoners.

In Nigeria, the legal and policy implications of executive reluctance to sign death warrants have not been sufficiently interrogated. While the judiciary continues to impose death sentences, the executive's refusal or reluctance to authorize executions creates a structural inconsistency within the criminal justice system. This raises critical questions about the legitimacy of continuing to impose death sentences in a system where their execution is increasingly unlikely.

The central argument advanced in this article is that Nigeria's current approach to capital punishment creates a state of legal and moral uncertainty that is difficult to justify within a constitutional democracy committed to the rule of law and respect for human rights. Thus, the article proposes that Nigeria must undertake a fundamental reconsideration of its approach to capital punishment. Such rethinking may involve legislative reforms, the institutionalization of systematic commutation mechanisms, or a transition toward formal abolition of the death penalty.

The article proceeds in several parts. The first section examines the legal framework governing capital punishment in Nigeria, including the constitutional and statutory provisions regulating the execution of death sentences. The second section analyzes the phenomenon of executive reluctance and its practical consequences for the administration of justice. The third section evaluates the human rights implications of prolonged death row incarceration vis-à-vis international legal standards, while the fourth section makes a comparative analysis from selected jurisdictions. The article concludes with proposals for legal and policy reforms.

¹ Capital punishment (also known as the death penalty) in Nigeria refers to the lawful deprivation of life by the State as a punishment for certain serious criminal offences, pursuant to a valid sentence of a court of law. It is the killing of a person by the State in accordance with its laws for an offence for which it is prescribed and for which the person has been found guilty. It represents the highest and most severe form of punishment available to the courts. Capital punishment is a constitutionally and statutorily sanctioned penalty involving the execution of a convicted offender by the State, and it is imposed by a competent court for specified grave offences under the Nigerian criminal law. See discussions on parts 2.1 and 2.2 below.

² One of the most visible features of military-era executions was the public execution of armed robbers under the Robbery and Firearms (Special Provisions) Decree No. 47 of 1970. In the 1970s and 1980s, several convicted armed robbers were executed by public firing squad, often in stadia or open fields. A widely cited instance occurred in 1971 at Bar Beach, Lagos, where convicted robbers were executed publicly to serve as a deterrent. Also, after the failed coup led by Lt. Col. Buka Dimka, which resulted in the assassination of Gen. Murtala Mohammed (the then Military Head of State), Dimka and several co-conspirators were tried by a military tribunal, convicted, and executed by firing squad shortly after their convictions in 1976.

2. Legal Framework Governing Capital Punishment in Nigeria

2.1. Constitutional Foundation for Capital Punishment

Capital punishment in Nigeria derives legitimacy primarily from the *Constitution of the Federal Republic of Nigeria, 1999 (as amended)* (“the Constitution”). *Section 33(1) of the Constitution* provides as follows:

“Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.”³

This provision establishes the right to life as a fundamental right. Simultaneously, it recognizes a constitutional exception permitting a deprivation of life pursuant to a lawful death sentence imposed by a competent court of law in a criminal trial. Thus, the Constitution authorizes and preserves capital punishment as a lawful sanction under the Nigerian criminal justice system.

Achibong describes the co-existence of constitutional protection of life and state-sanctioned execution as a “quandary” within Nigerian death penalty jurisprudence. [1] On his own part, Nwabueze examines the constitutional structure of fundamental rights in Nigeria and notes that the right to life under the Constitution is not absolute because the Constitution itself expressly preserves capital punishment. According to him, the constitutional guarantee of the right to life is qualified by the express recognition of lawful deprivation of life in execution of a judicial sentence. [2].

Nigerian courts have consistently affirmed the constitutionality of the death penalty. In *Kalu v. State*,⁴ the Supreme Court rejected the arguments that the death penalty constituted cruel, inhuman, or degrading punishment, holding that capital punishment remained constitutionally permissible, where imposed in accordance with the due process of law. According to *Iguh, J. S. C. (as he then was)*:

“Under section 30(1) of the Constitution, therefore, the right to life, although fully guaranteed, is nevertheless subject to the execution of a death sentence of a court of law in respect of a criminal offence of which one has been found guilty in Nigeria. The qualifying word, *save*, used in section 30(1) seems to me to be the unmistakable key to the construction of that provision. In my view, it is plain, that the 1979 Constitution can by no stretch of the imagination, be said to have proscribed or outlawed the death penalty. On the contrary, section 30(1) of the Constitution permits it in the clearest possible terms, so long as it is inflicted pursuant to the sentence of a court of law in Nigeria in a criminal

offence. In other words, section 30(1) of the Constitution recognizes the death penalty as a form of punishment but only on the condition that it is in the execution of sentence of a court of law in a criminal offence of which an accused person has been found guilty in Nigeria. The plain meaning of this section of the Constitution cannot be derogated from in the absence of any ambiguity whatsoever. It simply guarantees and protects the right to life. But, it also recognizes deprivation of life so long as it is pursuant to the execution of the sentence of a court in a criminal offence of which the accused has been found guilty in Nigeria.”

Similarly, in *Okoro v. State*,⁵ the Supreme Court reaffirmed that the death penalty for murder under the Nigerian law was not inconsistent with the provisions of *section 30(1) of the 1979 Constitution*.

It is imperative to emphasize that *section 30(1) of the 1979 Constitution* is *in pari materia* with *section 33(1) of the 1999 Constitution*. These decisions illustrate the judiciary’s longstanding position that the death penalty remains a legitimate component of Nigeria’s criminal justice system.

2.2. Statutory Offences Punishable by Death

Apart from the Nigerian Constitution, several statutes in Nigeria also create offences that are punishable by death. These are usually for serious and grave offences that pose serious threats to public order and security. The most prominent example is murder, which attracts a mandatory death sentence under the Criminal Code⁶ and the Penal Code.⁷ *Section 319(1) of the Criminal Code* provides thus:

“Subject to the provisions of this section of the Code, any person who commits the offence of murder shall be sentenced to death.”

Similarly, *section 221 of the Penal Code* provides that: “whoever commits culpable homicide punishable with death shall be punished with death.”

Thus, both statutes prescribe the punishment for unlawful intentional killing as death. While the Criminal Code, applicable to the states in the Southern part of Nigeria, uses the term “murder”, the Penal Code, applicable to states in the Northern parts of Nigeria, uses the term “culpable homicide punishable with death”. Both statutes refer to the same category of unlawful intentional killing attracting the death penalty.

Other offences punishable by death include armed robbery under the *Robbery and Firearms (Special Provisions) Act*.⁸ *Section 1(2)(a) and (b) of the Act* provides as follows:

“If any offender mentioned in subsection (1) of this section is armed with any firearms or any offensive weapon or is in the company of any person so armed” or “at or immediately before or immediately after the time of the robbery, the said offender wounds or uses any personal violence to

³ S. 33(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁴ *Kalu v. State* (1998) 13 NWLR (Pt. 583) 531.

⁵ *Okoro v. State* (1998) 14 NWLR (Pt. 584) 181.

⁶ The Criminal Code Act applies to the states in Southern Nigeria.

⁷ The Penal Code Act applies to the states in Northern Nigeria.

⁸ See s. 1(2) and (3) of the Robbery and Firearms (Special Provisions) Act, Cap R11, Laws of the Federal Republic of Nigeria (LFN) 2004.

any person, the offender shall be liable upon conviction under this Act to be sentenced to death.”

Section 1(3) of the Act goes further to provide for the mode of execution of the sentence of death, as follows:

“The sentence of death imposed under this section may be executed by hanging the offender by the neck till he be dead or by causing such offender to suffer death by firing squad as the Governor may direct.”

Furthermore, the punishment for the offence of treason is death penalty.⁹ Section 37(1) of the Criminal Code provides thus:

“Any person who levies war against the State, in order to intimidate or overawe the President or the Governor of a State, is guilty of treason, and is liable to the punishment of death.”

Section 37(2) of the Act further provides that *“Any person conspiring with any person, either within or without Nigeria, to levy war against the State with intent to cause such levying of war as would be treason if committed by a citizen of Nigeria, is guilty of treason and is liable to the punishment of death”*. Also, section 38 of the Act provides for death penalty for instigating any foreigner to invade Nigeria as follows: *“Any person who instigates any foreigner to invade Nigeria with an armed force is guilty of treason and is liable to the punishment of death”*.

The Terrorism (Prevention and Prohibition) Act, 2022 also prescribes death penalty for certain offences under the Act.¹⁰ Also, certain offences under the military law prescribe death penalty as punishment.¹¹ Finally, some states have also introduced capital punishment for the offence of kidnapping and other violent crimes, especially where they result to death.¹²

2.3. Death Sentence and the Role of the Executive

Under the Nigerian law, the imposition of a death sentence by a court does not automatically lead to execution. The law establishes a multi-stage process designed to safeguard against miscarriages of justice. After a conviction and sentencing, a defendant is entitled to exercise the right of appeal through the appellate courts, culminating in the Supreme Court. It is only after the exhaustion of the appellate remedies that the sentence can become final. Where the defendant or

convict fails to appeal against his conviction, the death sentence only becomes executable at the expiration of the time allowed under the law for appeal.¹³

Notwithstanding the above, the execution of death sentences requires additional authorization from the executive. The relevant authority must issue a formal death warrant before the sentence can be executed. This procedure reflects the historical incorporation of executive clemency mechanisms into capital punishment system and provides an additional safeguard against wrongful execution.

The Nigerian Constitution vests the prerogative of mercy in the President and the State Governors.¹⁴ This power enables the executive to grant pardons, reprieves, or commutations of sentences to convicted persons in appropriate cases, although section 175(1)(a) of the Constitution also contemplates extending such pardon to any person who is not yet convicted. The relevant section provides as follows:

“The President may grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions.”¹⁵ (underlining ours for emphasis).

The use of the words “concerned with or convicted of any offence” suggests that the person to benefit from such pardon need not be convicted prior to the pardon. It could be granted to any person who is “concerned with” an offence and not only necessarily to persons who are “convicted of” any offences. This is so because if the legislature did not contemplate granting of pardon to a person who is not yet convicted, it would have omitted the words “concerned with” and used only the words “convicted of” in section 175(1)(a) of the Constitution.

In practice, the President or State Governor must sign the death warrant authorizing execution. Without such authorization, a death sentence cannot be executed. The legal basis for issuing and signing death warrants in Nigeria is derived from the Administration of Criminal Justice Act, 2015 (ACJA)¹⁶ which contains clear provisions on execution of death sentences. Section 402 of ACJA provides as follows:

“Where a person is sentenced to death, the Chief Judge shall forward to the appropriate authority a copy of the record of proceedings and the sentence of the court and the execution of the sentence shall not take place until the appropriate authority issues a warrant.”

The “appropriate authority” herein refers to the President or

⁹ See s. 37(1) and (2) of the Criminal Code Act, Cap C38, Laws of the Federation of Nigeria (LFN) 2004. See also ss. 37-41 of the Penal Code Act for similar provisions.

¹⁰ See ss. 11(d)(ii), 24(2)(b), 36(1), 37(1), 38(1), 39(1), 42, 43(1), 44(1), and 45(1) of the Terrorism (Prevention and Prohibition) Act, 2022, Act No. 15, Federal Republic of Nigeria Official Gazette No. 91, Vol. 109, Government Notice No. 68 (16 May 2022).

¹¹ See ss. 45, 46, 47, 52(1), 106, and 107(2) of the Armed Forces Act, Cap A20, Laws of the Federation of Nigeria (LFN) 2004.

¹² See e.g., s. 2(2) of the Lagos State Kidnapping (Prohibition) Law, 2017, which provides thus: “where a kidnapped victim dies in the custody of the kidnappers, the offender shall be liable on conviction to death sentence.”

¹³ See s. 24(2)(b) of the Court of Appeal Act, Cap. C36, Laws of the Federation of Nigeria, 2004, for appeals from the decisions of the High Court to the Court of Appeal, which provides for a period of 90 days from the date of the final decision

appealed against, in appeals in criminal matters and causes. See also s. 27(2)(b) of the Supreme Court Act, Cap. S15, Laws of the Federation of Nigeria, 2004, for appeals from the decisions of the Court of Appeal to the Supreme Court, which provides for a period of 30 days from the date of final decision appealed against, in appeals in criminal causes and matters.

¹⁴ See ss. 175 and 212 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹⁵ Similarly, section 212(1)(a) provides that: “The Governor may grant any person concerned with or convicted of any offence created by any law of a state a pardon, either free or subject to lawful conditions”.

¹⁶ Prior to the enactment of the Administration of Criminal Justice Act, 2015, the legal basis for issuing and signing death warrants in Nigeria was derived from section 367 of the Criminal Procedure Act (applicable to states in the Southern part of Nigeria) and section 370 of the Criminal Procedure Code (applicable to states in the Northern part of Nigeria).

the State Governor, depending on whether the offence is a federal or state offence. Also, *section 403 of ACJA* provides that “the warrant shall specify the place, time, and manner of execution, and the execution shall be carried out accordingly”. Thus, the death warrant determines the place of execution, the time of execution, and the method of execution.

The provisions of the ACJA operate alongside the constitutional powers of clemency under the Nigerian Constitution. Because the executive can commute or suspend a sentence, the law requires that the record of proceedings be forwarded to the executive authority before execution.

The combined effect of the provisions of the Constitution and the ACJA in this regard is that after the imposition of a death sentence by the court, the records of proceedings are transmitted to the State Governor or the President (as the case may be), and the Governor or President may decline or authorize execution of the death sentence by signing a death warrant. Where the executive declines to sign a death warrant, the convict will be on a death row incarceration. The death sentence may be commuted to life imprisonment, reprieved, or pardoned by the executive. Execution of a death sentence can only occur after the death warrant is issued and signed by the executive.

This arrangement creates a unique institutional relationship between the judiciary and the executive in the administration of capital punishment. Thus, while courts impose the sentence, the executive retains the power to determine whether the sentence will ultimately be carried out.

The difficulty arises when this power is not exercised either positively (by authorizing execution) or negatively (by commuting the sentence). In such circumstances, prisoners remain indefinitely on death row, creating a situation that raises significant legal and human rights concerns.

3. Executive Reluctance and the Emergence of a *De Facto* Moratorium

3.1. Historical Trends in Executions in Nigeria and Factors Influencing Executive Reluctance

The concept of “de facto moratorium” in death penalty jurisprudence generally refers to a situation where a state retains capital punishment in law but refrains from carrying out executions in practice for a prolonged period, thereby creating an effective suspension of capital punishment without formal legal abolition. [5] Although the death penalty remains legally

valid, the consistent non-implementation of executions effectively suspends its operations.

Historically, executions were carried out in Nigeria with some regularity, particularly during periods of military rule.¹⁷ However, since the country’s return to democratic governance in 1999, the frequency of executions has declined significantly.

Governors now decline to sign death warrants, effectively suspending executions within their jurisdictions. The federal government has similarly demonstrated reluctance to authorize executions for federal convictions, thereby leaning toward operating under a *de facto* moratorium on executions, even though capital punishment remains legally permissible in the country.

The available data on death warrants and commutation of death sentences to life imprisonments in Nigeria since the return to civil rule in 1999 is fragmented. From 1999 to date, there have been extremely few (generally cited as two) instances of governors signing death warrants, resulting in very limited executions. [3] Only Governor Ibrahim Shekarau of Kano State in 2006 and Governor Adams Oshiomhole of Edo State in October 2012 that have reportedly signed death warrants. [4] With respect to death sentences commuted to life imprisonments, there is no centralized, publicly accessible data on the total number of commutations. However, evidence shows that Presidents and Governors usually exercise their power of clemency as provided under sections 175 and 212 of the Nigeria Constitution, whereby they have commuted some death sentences to life imprisonments as well as granted pardon or reprieve to some other convicts.

Several factors contribute to the executive’s reluctance in implementing death sentences. The first among them is political considerations, which play an important role. Executions attract considerable public attention and may provoke criticisms from both domestic and international observers and human rights defenders. Religious and ethnic considerations are also another factor that influence political leaders. Nigeria is a deeply religious society, and many leaders may feel moral reservations about authorizing the taking of human life through state sanctions. The third factor is the growing global movement toward the abolition of the death penalty. International human rights organizations have consistently advocated for the abolition of capital punishment, and many states have responded by either abolishing the death penalty or adopting *de facto* moratorium on executions. Finally, the possibility of wrongful conviction is another important factor.¹⁸ This has become a growing concern within criminal justice systems worldwide. Executing an innocent person represents an irreversible miscarriage of justice.

These considerations may collectively explain why political leaders increasingly prefer to avoid signing death warrants.

Adamawa State, following global condemnation of the conviction and death sentence and pressure from external forces and human rights bodies. Sunday Jackson is an Adamawa farmer sentenced to death by the trial court (which conviction and death sentence were affirmed by both the Court of Appeal and the Supreme Court) for defending himself in his farm against the deceased Buba Ardo Baruwa, a herdsman.

¹⁷ See discussions in part 1 and footnote n. 2 above.

¹⁸ See the Supreme Court’s conviction of Sunday Jackson in Suit No. SC/CR/1026/2022 – Sunday Jackson v. The State. The judgment in the appeal was delivered on March 7, 2025, and it generated global criticisms and calls for a revisit, leading to the eventual granting of pardon to Sunday Jackson by the Governor of

Nevertheless, the consequence of executive reluctance has been the steady growth of the death row population within correctional facilities in Nigeria. Many prisoners remain incarcerated for extended periods of time after their convictions have been finalized.¹⁹ A check at the website of the Nigerian Correctional Service reveals a total inmate population of 80,380. [6] This situation has significant implications for prison administration, human rights protection, and the legitimacy of the criminal justice system.

3.2. Growth of Death Row Population and Institutional Tension Between the Judiciary and Executive

One of the most visible consequences of executive reluctance in the execution of the death sentence is the growing number of inmates on death row in the correctional facilities in Nigeria. Many of these prisoners remain incarcerated for extended periods, without knowing what fate befalls them. Oyinloye, Ngwoke, and Eruteya [7] address institutional consequences of executive hesitation in implementing death sentences. They argue that the absence of adequate and transparent procedures in the matters of sentencing and pardoning results in whimsical decisions that are capable of undermining the credibility of the judiciary. On his own part, Andrew Novak, [8] argues that many African retentionist states experience institutional tension where courts continue to impose death sentences while the executive authorities refrain from implementing them in practice.

The persistent refusal of the executive to authorize executions also raises institutional concerns. When courts impose death sentences, but the executives refuse to implement them, the result is a disconnect or tension between judicial decisions and executive actions. This dynamic raises questions about the coherence of the criminal justice system and the appropriate balance of powers between the arms of government.

Decisions of courts of law carry the tone of finality and all authorities and persons in Nigeria are obliged to obey and enforce them. *Section 287(1) of the Constitution* provides that: “*The decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Supreme Court*”.²⁰ Also, *section 287(3) of the Constitution*, on the decisions of the Federal High Court and other subordinate courts, provides as follows:

“*The decisions of the Federal High Court, the National Industrial Court, a High Court and all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons and by other courts with subordinate jurisdiction...*”

The implication of these provisions is that the decisions of courts of law in Nigeria bind every person, authority, and institution (including the President and Governor of a state) to obey and enforce court decisions. Thus, the President and State Governors are bound to implement any death sentence imposed by the courts, unless they exercise the power of clemency granted them under *sections 175(1) and 212(1) of the Constitution* respectively.

Where, however, the executive declines to implement the death sentence, or commutes it to life imprisonment, or grants pardon or reprieve to the convict, does the refusal not derogate from the obligation to enforce court orders? Does it not amount to a disobedience to lawful orders of the court?

Arguably, the power granted to the executive to sign death warrants before any death sentence becomes executable appears to derogate from the principle of finality of decisions of courts of law and the need for an immediate enforcement of the final decisions of courts. It appears to have created another stage of appeal or review over the final decisions of courts in criminal matters.

4. Human Rights Implications of Prolonged Death Row Incarceration

4.1. The Death Row Phenomenon in International Human Rights Law

Harrison and Tamony [9] define the concept of “death row phenomenon” as “the harmful effects of death row conditions” whilst Hood and Hoyle [10] note that the term produces “severe psychological suffering aggravated by uncertainty and isolation. On her own part, Smith [11] theorized that the concept contains three components – a temporal component (time spent awaiting execution), a physical component (conditions of confinement), and an experiential component (living under sentence of death) – and argues that the psychological experience of awaiting execution distinguishes condemned prisoners from ordinary inmates.

These positions capture the psychological and emotional suffering associated with prolonged incarceration under sentence of death. In essence, the concept refers to the severe psychological trauma, mental anguish, emotional suffering, and degrading conditions experienced by condemned prisoners who remain under sentence of death for prolonged periods.

The phenomenon was famously recognized in *Pratt & Morgan v. Attorney-General for Jamaica*,²¹ where the Judicial Committee of the Privy Council (Privy Council) held that excessive delay in carrying out executions could amount to inhuman or degrading punishment. In this case, the Court held

¹⁹ However, according to the Nigerian Correctional Service (NCoS) as its National Joint Security Press Briefing, reported in the Guardian newspaper of August 5, 2025, as of July 24, 2025, there were a total of 3,833 inmates on death row incarceration, 53,473 awaiting trial inmates, 24,252 convicted inmates, and a total 81,558 inmate population across custodial centres in Nigeria. Accessible at NCoS:

Over 53,000 inmates awaiting trial, 3,833 on death row

²⁰ See also s. 287(2) of the Constitution for similar provisions in respect of the decisions of the Court of Appeal.

²¹ *Pratt & Morgan v. Attorney General for Jamaica* (1993) UKPC 1.

that a delay exceeding five years between sentencing and execution would normally justify commutation of the death sentence to life imprisonment.

The reasoning in this Jamaican case has influenced courts in several jurisdictions. The central argument is that prolonged uncertainty regarding execution inflicts severe psychological suffering on prisoners and therefore violates fundamental human rights.

This decision has had far-reaching consequences. It led to the commutation of numerous death sentences across the Caribbean and effectively created a judicially enforced moratorium on executions in several jurisdictions.

The underlying rationale in *Pratt & Morgan* is particularly instructive. The court recognized that the psychological suffering associated with prolonged uncertainty regarding execution constitutes a form of punishment in itself. Thus, executing a prisoner after such delay would amount to subjecting the individual to double punishment – the prolonged mental anguish of waiting for execution and the execution itself.

4.2. Cruel, Inhuman, or Degrading Treatment or Punishment of Death Row Inmates

International human rights law prohibits torture and other cruel, inhuman, or degrading treatment or punishment.²² *Article 16 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*²³ (UNCAT) provides thus:

“Each State Party shall undertake to prevent torture and other cruel, inhuman, or degrading treatment or punishment which do not amount to torture.”

The Preamble to the UNCAT reflects the broader human rights principle that no one (including death row inmates) should be subjected to torture or cruel, inhuman, or degrading treatment or punishment.

It must be emphasized that an inmate on death row does not lose his or her fundamental rights. Both Nigerian domestic constitutional law and international human rights law continue to protect such a person, even after conviction and sentencing. The Nigerian Constitution remains the supreme law of the land, and its protections apply to all persons, including death row inmates.

Section 33(1) of the Constitution guarantees the right to life. However, it allows deprivation of life only in execution of a court sentence after due process.²⁴ This means that execution must strictly comply with legal procedures and any deviation can amount to unlawful killing.

Death row inmates must not be subjected to torture, harsh prison conditions, or cruel, inhuman, or degrading treatment

or punishment, and this includes the concept of death row phenomenon – prolonged delay and harsh conditions. This is because there is an absolute prohibition of torture, admitting of no exception, even for condemned prisoners or inmates on death row.

The prolonged incarceration of inmates on death row under the constant threat of execution and the psychological anguish associated with indefinite uncertainty regarding execution constitutes cruel, inhuman, or degrading treatment or punishment and amount to a violation of their fundamental rights against cruel, inhuman, or degrading treatment or punishment. According to William Schabas, [12] prolonged detention under sentence of death has increasingly been regarded as inhuman treatment. He argues that courts increasingly interpret constitutional protections against cruel, inhuman, and degrading treatment as extending to prolonged death row incarceration. This reinforces the argument that indefinite death row incarceration may violate contemporary human rights standards. Similarly, Feldman argues that prolonged imprisonment under sentence of death may become unconstitutional because of the psychological suffering associated with indefinite confinement. [13].

The African Commission on Human and Peoples’ Rights has consistently held that prolonged death row incarceration constitutes potential violation of the rights of a death row inmate and has urged Member States to permit a moratorium on execution and/or commutation of the death penalty to life imprisonment.

It is imperative to state that a death row inmate is still a rights-bearing person and retains the right to seek mercy under Nigerian domestic laws.²⁵ They still retain constitutional protection, human rights dignity, access to justice, and protection under international law. The death sentence only affects the right to life in a narrowly defined legal sense.

4.3. Nigeria’s Obligations Under International Human Rights Law

Nigeria is a party to several international and regional human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples’ Rights (“the African Charter”), the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), and the Universal Declaration on Human Rights (UDHR). While these instruments do not universally prohibit the death penalty, they impose strict limitations on its use and emphasize the protection of human dignity. *Article 6(2) of the ICCPR* provides as follows:

“In countries which have not abolished the death penalty,

²² See article 5 of the African Charter on Human and Peoples’ Rights, article 7 of International Covenant on Civil and Political Rights, and article 5 of the Universal Declaration of Human Rights. See also s. 34 of the Nigerian Constitution

²³ The UNCAT came into force on June 26, 1987. It was adopted by the UN General Assembly on December 10, 1984.

²⁴ See also article 4 of the African Charter on Human and Peoples’ Rights & article

6 of ICCPR.

²⁵ See ss. 175 & 212 of the Nigerian Constitution. See also article 6(4) of the ICCPR which provides that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence, and that amnesty, pardon, or commutation of the death sentence may be granted in all cases.

sentences of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crimes of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.”

The African Commission on Human and Peoples’ Rights has repeatedly encouraged African states to move toward the abolition of capital punishment.²⁶ In 2005, the Commission established the Working Group on Death Penalty as a special mechanism to monitor the use of the death penalty in Africa and promote progressive abolition. In its *General Comment No. 3 on Article 4 of the African Charter* issued by the Commission to interpret the right to life under the African Charter, the Commission restricts the death penalty to very serious narrow circumstances, emphasizes fair trial guarantees, and encourages States Parties to move toward abolition of the death penalty.

International human rights law places limitations on the use of capital punishment. The ICCPR permits the death penalty only for the most serious crimes and subject to strict procedural safeguards.²⁷ Similarly, the African Charter emphasizes the protection of human dignity and humane treatment of prisoners. *Article 5 of the African Charter* provides thus:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment or treatment shall be prohibited.”²⁸

Although the Charter does not expressly mention “prisoners”, article 5 has been interpreted by the Commission to require humane conditions of detention, prohibit torture and ill-treatment in custody, and protect prisoners from degrading or inhuman punishment.

Article 10 of the ICCPR specifically makes provisions for the humane treatment of persons deprived of liberty. It provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.²⁹ The article emphasizes human dignity and humane treatment in detention.

Nigeria’s continued retention of the death penalty, combined with prolonged death row incarceration, arising from non-execution of death sentences or non-commutation to life imprisonment, raises important questions regarding compliance with these obligations. Nigeria, as a party to these instruments, is obligated to ensure that its criminal justice system complies with these standards.

5. Comparative Analysis from Selected Jurisdictions

5.1. Judicial Responses to Delayed Executions

Several jurisdictions have confronted similar challenges regarding delays in the implementation of death sentences. In India, the Supreme Court has held that undue, prolonged delay in the execution of a death sentence is a valid ground for commutation of the death penalty to life imprisonment.³⁰ The Court held further that excessive delay in deciding mercy petitions violates the condemned prisoner’s right to life and dignity under *article 21 of the Indian Constitution*. This is because such delays subject inmates to mental agony and torture.

This case also expanded the ground for commutation. The Court identified several factors that can justify commutation of a death sentence to life imprisonment, including inordinate delay in deciding mercy petitions, mental illness or insanity of the prisoner, solitary confinement of the prisoner, or procedural irregularities in handling mercy petitions. The Court emphasized that even after conviction and sentencing, prisoners retain their right to dignity and humane treatment. Finally, the Court issued important procedural safeguards, including that death row inmates must be informed of the rejection of their mercy petitions, that they must be given time to meet family and prepare mentally, and that post-rejection rights (legal and procedural) must be respected. The outcome of the case is that the Supreme Court of India commuted the death sentences of several petitioners to life imprisonment due to delays and other violations.

This case is a major authority in comparative constitutional law and human rights because it strengthens the link between delay and cruel, inhuman, or degrading treatment; reinforces limits on executive clemency powers; and has been cited in debates on abolition or restriction of the death penalty in many other jurisdictions.

Similarly, courts in several Caribbean jurisdictions have recognized that extended delays may violate constitutional protections against inhuman punishment.³¹

These comparative developments illustrate an emerging global consensus that prolonged death row incarceration raises serious human rights concerns. They also demonstrate that courts can play an important role in addressing the problem through constitutional interpretations.

Nigeria may draw valuable lessons from these comparative experiences in reconsidering its approach to capital punishment.

²⁶ See ACHPR Resolution 42 (XXVI) (1999) where the Commission called on States Parties to consider a moratorium on executions and reflect on abolishing the death penalty. See also Resolution 136 (2008) on stronger abolitionist position of the Commission, which urged States Parties to observe a moratorium on executions, commute death sentences, or work towards complete abolition.

²⁷ See article 6 of the ICCPR.

²⁸ See also articles 7 and 10(1) of the ICCPR.

²⁹ See article 10(1) of the ICCPR.

³⁰ See the Indian Case of *Shatrughan Chauhan v. Union of India* (2014) 3 SCC 1.

³¹ See *Pratt & Morgan v. Attorney General of Jamaica* (n. 21).

5.2. *De Facto* Moratoria, Legal Reforms in Selected Jurisdictions, and Intervention by Human Rights Bodies

The global debate on capital punishment has increasingly shifted from the question of whether states retain the death penalty in law to whether they continue to enforce it in practice. A growing number of countries have adopted what is commonly described as a “*de facto* moratorium” on execution of death sentences. This arises when a state ceases to carry out executions for a prolonged period without formally abolishing the death penalty in law. In such situations, courts may continue to impose death sentences, but the executive authority refrains from authorizing their executions. This practice is frequently described as “abolition in practice”, reflecting a policy of non-enforcement despite the continued existence of capital punishment under the criminal justice system.

Under the *de facto* moratorium, the death penalty formally remains part of the criminal legal framework, but executions are suspended either through executive policy, judicial intervention, or political consensus. Over time, such moratoria have often served as transitional mechanisms leading to broader legal reforms, including the reduction of capital offences, commutation of death sentences to life imprisonment, or complete abolition of the death penalty.

In South Korea, for instance, the government introduced a moratorium in 1998. President Kim Dae-jung,³² upon assumption of office, enacted a moratorium on executions, and the moratorium is still in effect till date.³³ Thus, executions in South Korea are considered to be *de facto* abolished. Although capital punishment remains legally permissible, no executions have been carried out since 1997. This long suspension has created what is widely recognized as a “*de facto* moratorium” on execution. The country is, therefore, widely regarded as “retentionist in law” but “abolitionist in practice”, even though courts continue to impose death sentences.

As a member of the United Nations, South Korea has repeatedly voted in favour of the UN General Assembly resolutions calling for a global moratorium on executions of death sentences. Although unlike the Indian judicial approach, South Korea has not adopted a judicial rule that delay in execution of a death sentence leads to commutation to life imprisonment.

Also, in the Kyrgyz Republic, a presidential moratorium on execution was introduced in 1998. This temporary suspension was repeatedly extended by presidential decrees before eventually leading to the complete abolition of the death penalty in 2007 through amendments to the criminal code and constitutional provisions guaranteeing the right to life. This was made possible through the adoption of a new Constitution in 2007,³⁴

which formally abolished the death penalty and replaced with life imprisonment, thereby marking the transition from *de facto* moratorium to *de jure* abolition. Thus, Kyrgyzstan presents a clear progression from a *de facto* moratorium to a complete legal abolition of the death penalty. The abolition effectively resolved the legal tension surrounding prolonged death row incarceration. The Kyrgyzstan lesson is to the effect that a *de facto* moratorium is often a transitional stage and can evolve into a full constitutional and international abolition.

In Africa, some African countries have adopted moratoria on executions while retaining the death penalty in their criminal laws. In 1994, the Malawian President, Bakili Muluzi, upon the country’s return to civilian rule, declared that he would not sign death warrants and accordingly commuted numerous death sentences to life imprisonment. Thus, despite the continued imposition of death sentences by the courts in Malawi, the executive’s refusal to authorize executions effectively established a *de facto* moratorium on capital punishment.

Malawi later introduced important legal reforms aimed at limiting the scope of the death penalty. In the landmark case of *Kafantayeni v. Attorney General*,³⁵ the Malawian Court ruled that mandatory death penalty for murder was unconstitutional and a violation of the right to life, the right to dignity, and the right to fair trial. The Court emphasized that imposing death without considering mitigating factors is arbitrary, inhumane, and degrading. This decision significantly transformed the country’s approach to capital punishment and reflected broader regional trends toward the gradual restriction of the death penalty.

Also, in Mauritania, there has been a *de facto* moratorium on execution of the death penalty since 1987. Although courts in the country continue to impose death sentences under the country’s criminal justice system, executions have not been carried out for several decades. As a result, Mauritania is frequently categorized as “abolitionist in practice”, illustrating how prolonged non-enforcement can effectively suspend capital punishment without formal legislative abolition.

Regional human rights institutions have also encouraged these developments. The African Commission on Human and Peoples’ Rights has repeatedly called upon African countries to move toward abolition of the death penalty and to adopt moratoria as an interim step toward achieving that objective. At its 44th Ordinary Session, the Commission adopted Resolution ACHPR/Res. 136/(XXXIV)08 wherein it urged States Parties to the African Charter on Human and Peoples’ Rights that still retain the death penalty to, among others, observe a moratorium on the execution of death sentences with a view to abolishing the death penalty in conformity with Resolution ACHPR/Res 42/(XXVI)³⁶

³² President Kim Dae-jung took office in 1998.

³³ See Wikipedia, the free encyclopedia.

³⁴ See the Constitution of the Kyrgyz Republic adopted by national referendum on October 21, 2007, which abolished the death penalty in Kyrgyzstan.

³⁵ Francis Kafantayeni & Ors v. Attorney General, Constitutional Case No. 12 of

2005 [2007] MWHC 1 (High Court of Malawi, sitting as a Constitutional Court).

³⁶ This Resolution was adopted at the 26th Ordinary Session of the African Commission on Human and Peoples’ Rights held from November 1 – 15, 1999, in Kigali, Rwanda, and it calls on States Parties to the African Charter to consider observing a moratorium on the death penalty.

of the African Commission and Resolution 62/149³⁷ of the General Assembly of the United Nations as well as ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.³⁸ Also, the United Nations Human Rights Commission (HRC) has called on all States that still retain the death penalty to totally abolish it and, in the meantime, observe a moratorium on executions.³⁹

6. Rethinking Capital Punishment in Nigeria

6.1. Legislative Reforms and Abolition Debates

In order to resolve the contradictions within Nigeria's capital punishment system, there is need for significant legal and policy reforms. One of the reforms is the legislative rethinking of capital punishment toward a total abolition of the death penalty or a reduction of capital offences. Several countries have adopted this approach in response to concerns regarding wrongful convictions and human rights violations.⁴⁰

Another option is the introduction of structured commutation mechanisms. This may involve the automatic commutation of all existing death sentences to life imprisonment if executions are not carried out within a specified timeline as provided in the law.⁴¹ This aims at decongesting our already overcrowded correctional facilities.

Further, the principles developed in comparative jurisprudence are highly relevant to Nigeria's current situation. Nigeria's constitutional framework contains provisions that protect human dignity and prohibit inhuman treatment.⁴² These provisions provide a normative basis for judicial intervention.

However, Nigerian courts have historically been reluctant to adopt the doctrine of "death row phenomenon". Judicial decisions have tended to emphasize the legality of the death sentence rather than the conditions of its implementation.⁴³ Badejogbin [14] argues that Nigerian courts have adopted an unduly restrictive constitutional interpretation regarding the rights to life and human dignity. According to him, although the death penalty remains constitutionally valid, the judicial reasoning supporting mandatory capital punishment and prolonged death row incarceration is constitutionally flawed. He criticizes the restrictive constitutional interpretation adopted by Nigerian courts in death penalty jurisprudence and argues

that a review of the jurisprudence is long overdue.

The Nigerian context presents an even stronger case for judicial intervention than many of the jurisdictions discussed above. Unlike in *Pratt & Morgan* where delays were often attributable to lengthy appellate processes, the delays in the Nigerian case are largely the result of executive inaction and reluctance to authorize the execution of death sentences. Prisoners who have exhausted all appeals remain on death row indefinitely, with no clear indication of whether their sentences will be executed or commuted.

This situation raises fundamental questions about fairness, proportionality, and the rule of law. If the executive is unwilling or unable to carry out executions within a reasonable time, it is arguable that the continued imposition of death sentences becomes arbitrary and unjustifiable and the demand for automatic commutation to life imprisonment becomes justifiable.

6.2. Judicial Intervention and Constitutional Interpretation

As discussed earlier, the phenomenon of executive non-execution of death sentences in Nigeria presents a profound constitutional dilemma. This situation raises fundamental questions about the role of the judiciary in safeguarding constitutional rights and the extent to which constitutional interpretation can be deployed to resolve the legal and human rights implications of prolonged death row incarceration. Judicial intervention, particularly through purposive constitutional interpretation, offers a critical pathway for addressing this paradox and restoring coherence in Nigeria's criminal justice system.

When there is a constitutional gap or institutional failure, judicial intervention becomes necessary. In the context of Nigeria's death penalty regime, the judiciary imposes sentences in accordance with existing laws, but the executive's refusal to sign death warrants effectively suspends their execution. This creates a situation where the judicial process reaches finality, yet the punishment remains indefinitely in abeyance.

From a constitutional standpoint, such a situation raises concerns under *section 34(1) of the Nigerian Constitution*, which guarantees the right to dignity of the human person and prohibits inhuman or degrading treatment. While Nigerian courts have upheld the constitutionality of the death penalty itself, the issue here is not the legality of the sentence *per se*,

³⁷ Resolution 62/149 of the General Assembly of the United Nations was adopted at the 62nd Session of the Assembly held on December 18, 2007. It calls on all States Parties to the United Nations Charter that still retain the death penalty to maintain international standards, progressively restrict the use of the death penalty, and establish a moratorium on executions with a view to abolishing the death penalty. It also calls on States Parties that have abolished the death penalty not to re-introduce it.

³⁸ This Ordinary Session took place in Abuja, Nigeria, between November 10 and 24, 2008.

³⁹ See the UN HRC Resolution 2005/59 adopted on April 20, 2005. See also Resolution 1999/4 of the United Nations Sub-Commission on the Promotion and Protection of Human Rights, calling on all States that still retain the death penalty and are not observing a moratorium on executions, to, as part of the celebration of the

millennium, at least commute death penalty sentences into life imprisonment by December 31, 1999, and, to commit themselves to observe a moratorium on the execution of death sentences throughout the year 2000.

⁴⁰ See the position in Kyrgyzstan discussed at 5.2, para. 5 above. See also the situation in Malaysia. Although capital punishment is not yet abolished, its use is significantly restricted. See also the Malawian situation that abolished mandatory death penalty, introduced individualized sentencing, and large-scale resentencing of inmates.

⁴¹ See the decision in *Pratt & Morgan v. Attorney General of Jamaica* that held that any delay exceeding five years between sentencing and execution would automatically commute any death penalty to life imprisonment.

⁴² See s. 34(1) of the Nigerian Constitution.

⁴³ See *Kanu v. State* (n. 4) and *Okoro v. State* (n. 5).

but the legality of the condition and duration of the implementation.

This distinction is critical. As noted in the comparative analysis, a challenge based on prolonged delay is not directed at the validity of the death sentence itself, but at the manner and circumstances of its execution.

Thus, judicial intervention is justified not as an attack on legislative policy, but as an effort to ensure that the implementation of capital punishment complies with constitutional and human rights guarantees.

On the other hand, constitutional interpretation plays a central role in enabling judicial intervention. Nigerian courts have traditionally adopted a literal and conservative approach to the imposition of the death penalty, relying heavily on *section 33(1) of the Constitution*, which permits deprivation of life in execution of a court sentence. However, a more purposive and rights-oriented interpretation of the Constitution would require courts to consider not only the legality of the sentence but also its compatibility with broader constitutional values, including human dignity and freedom from inhuman treatment. Thus, Hudson, while examining the death row phenomenon from the perspective of international human rights adjudication and constitutional protection, argues that courts have a constitutional obligation to intervene where prolonged delay transforms lawful punishment into cruel or degrading treatment. [15].

A purpose interpretation would recognize that constitutional rights are not static but must be interpreted in light of evolving standards of decency and human rights. In this regard, *section 34(1) of the Constitution* should not be read in isolation but in community with *section 33(1) of the Constitution*. While the latter permits capital punishment, the former imposes limits on how punishment may be carried out.

Since prolonged death row incarceration without execution or commutation may constitute inhuman or degrading treatment under international human rights law, the judiciary, therefore, has a constitutional obligation to provide an effective remedy to death row inmates indefinitely incarcerated.

The landmark decision in *Pratt & Morgan v. Attorney-General of Jamaica*⁴⁴ established that excessive delay in carrying out a death sentence may render the execution unconstitutional. According to the Privy Council, executing a prisoner after prolonged delays, in this case, after fourteen years, would constitute inhuman or degrading punishment, thereby violating constitutional guarantees and human rights safeguards.

Also, courts in India have adopted a rights-based approach to prolonged delays in execution. Judicial decisions have held that inordinate and unexplained delays in carrying out a death sentence may violate constitutional protections and justify commutation to life imprisonment.⁴⁵

These cases demonstrate that judicial intervention can play a transformative role in aligning capital punishment practices with constitutional and human rights standards.

In Nigeria, judicial intervention could take several forms,

depending on the interpretative approach adopted by the courts. First, courts could recognize that prolonged death row incarceration constitutes inhuman or degrading treatment or punishment under *section 34(1) of the Constitution*. This would align Nigerian jurisprudence with international and comparative standards as well as its obligations under international human rights law.

Second, courts could set a timeframe – as in *Pratts & Morgan* – within which executions must be carried out. Where this time limit is exceeded, the death sentence would automatically be commuted to life imprisonment. This would provide clarity and consistency in the application of constitutional rights.

Lastly, courts could also require the executive authorities to provide justification for delays in the execution process. Where such delays are found to be arbitrary or unjustified, courts could grant appropriate relief to affected prisoners.

Judicial intervention through constitutional (re)interpretation has the potential to fundamentally reshape Nigeria's approach to capital punishment. By recognizing the constitutional implications of prolonged death row incarceration, the courts can address the contradictions inherent in the current system. Such intervention may also have broader implications for criminal justice reforms. It could trigger legislative reconsideration of the death penalty, encourage the development of structured commutation mechanisms, and align Nigeria's criminal legal system with international human rights standards.

7. Conclusion and Recommendations

The capital punishment in Nigeria is currently in a state of limbo. Its persistence within Nigeria's legal system and the entrenched practice of executive non-execution of death sentences, has produced a constitutional and moral paradox that this article has described as "capital punishment in limbo." While the Nigerian Constitution and extant criminal laws continue to authorize the imposition of the death penalty, the sustained executive reluctance to sign death warrants has effectively transformed the system into a *de facto* moratorium regime. This raises serious constitutional, institutional, and human rights questions, including the right to human dignity and the prohibition against cruel, inhuman, or degrading treatment or punishment.

This phenomenon of executive non-execution of death sentences in Nigeria presents a compelling case for judicial intervention grounded in constitutional interpretation.

Nigeria's obligations under international human rights law are neither aspirational nor optional. As a state party to key human rights treaties, Nigeria is required to ensure that punishment, even where lawfully imposed, is carried out in a manner consistent with evolving standards of decency and respect for human dignity. The continued maintenance of a system

⁴⁴ See n. 21 above.

⁴⁵ See n. 30 above.

that imposes death sentences without execution, thereby subjecting inmates to prolonged psychological suffering, places Nigeria at odds with emerging global norms that increasingly favour abolition or, at the minimum, strict limitation of the death penalty.

Nigeria must, therefore, undertake a fundamental rethinking of its approach to capital punishment. The present system, characterized by normative, formal retention and practical suspension, is neither legally coherent nor morally defensible. It imposes death sentences without any finality of execution, thereby inflicting severe psychological and mental anguish or suffering on death row inmates.

The judiciary can play a vital role in addressing these challenges by recognizing the constitutional and human rights implications of prolonged delay and providing appropriate remedies. Adopting the judicial approaches observed in some jurisdictions in Nigeria would not only resolve the current paradox but also strengthen the protection of fundamental rights within the criminal justice system.

Therefore, it is proposed that Nigeria rethinks its capital punishment regime by adopting some legislative and policy reforms. First, there is a compelling case for legislative reform aimed at either the total abolition of the death penalty or its substantial restriction. The legislature should undertake a comprehensive review of all laws prescribing capital punishment, with a view to repealing or amending such provisions in line with contemporary human rights standards. At a minimum, the scope of capital offences should be narrowed.

Second, in the absence of immediate abolition, a statutory or constitutional mechanism should be introduced to address prolonged death row incarceration. This may take the form of a legally enforceable timeframe (as now is the case in some jurisdictions) within which death sentences must be carried out, failing which such sentences are automatically commuted to life imprisonment or a term of years. Such a framework would align Nigeria with comparative jurisprudence and mitigate the human rights violations associated with indefinite delay.

Third, the judiciary has a critical role to play in safeguarding human rights through purposive and rights-respecting interpretations. Nigerian courts should begin to interrogate the constitutionality of prolonged death row incarceration under the right to dignity and freedom from inhuman treatment. Drawing on comparative and international jurisprudence, courts can develop a principled basis for commuting death sentences to life imprisonment where inordinate delay has occurred. Judicial intervention and reinterpretation represent a necessary and legitimate response to the constitutional and human rights concerns arising from prolonged death row incarceration. It offers a pathway toward a more coherent, humane, and constitutionally compliant system of criminal justice.

Fourth, broader criminal justice reforms are necessary to address systemic deficiencies that contribute to the growth of the death row population. These may include the structured

commutation of the death penalty to life imprisonment, judicial intervention, improvement of access to competent legal representation, expediting the appellate processes, enhancing prison conditions, and strengthening oversight mechanisms. These reforms will ensure that Nigeria's criminal justice system remains consistent with modern constitutional principles, human dignity, and the rule of law.

Ultimately, the question confronting Nigeria is not merely whether to retain or abolish the death penalty, but whether its criminal justice system can sustain a punishment that, in its current form, operates in contradiction to constitutional values and international human rights norms. The emerging global consensus toward abolition reflects a recognition that the death penalty, although lawful, carries an inherent risk of arbitrariness, irreversibility, and abuse. Nigeria's present experience – marked by executive non-execution and prolonged death row incarceration – illustrates these risks in stark terms.

Finally, a principled and forward-looking response requires aligning law with practice, and both with the imperatives of human dignity and justice. Whether through abolition or far-reaching reforms, Nigeria must resolve the disparity at the heart of its capital punishment regime. To do otherwise is to perpetuate a system that condemns individuals not only to death, but also to the enduring uncertainty of a punishment indefinitely deferred.

Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACJA	Administration of Criminal Justice Act
Cap	Chapter
E.g.	Example
Gov.	Governor
ICCPR	International Covenant on Civil and Political Rights
J. S. C.	Justice of the Supreme Court
LFN	Laws of the Federation of Nigeria
Lt. Col.	Lieutenant Colonel
NCoS	Nigerian Correctional Service
MWHC	Malawi High Court
No.	Number
NWLR	Nigerian Weekly Law Report
Ors.	Others
S.	Section
Ss.	Sections
SSC	Supreme Court Cases
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAT	United Nations Convention Against Torture
UNHRC	United Nations Human Rights Commission
Vol.	Volume

Author Contributions

Ituah Imhanze: Supervision, Data curation, Writing – review & editing, Resources

Cajetan Osisioma: Conceptualization, Investigation, Methodology, Formal Analysis, Writing – original draft

Conflicts of Interest

The authors declare no conflicts of interest.

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Biography



Ituah Imhanze is the Managing Partner at KENNA, a leading Litigation and Dispute Resolution law firm in Nigeria. He is a seasoned dispute resolution specialist and oversees the technical and professional standards of practice of law at the firm. He also develops practice strategies and case management as well as supervises legal work at the firm, ensuring compliance with ethical and professional standards. Itua represents high-net-worth clients before courts and tribunals in Nigeria and have been involved in landmark cases and decisions that have led to the development of laws in Nigeria and beyond. He is an alumnus of the Lagos Business School (LBS), Member of the Chartered Institute of Arbitrators (UK), and Fellow of the Chartered Institute of Arbitrators (Nigeria).



Cajetan Osisioma is a seasoned legal professional, litigation and disputes resolution specialist, international human rights lawyer, scholar, researcher, and writer. In 2021, the United States Government awarded him the highly competitive and prestigious Hubert H. Humphrey Fellowship, a Fulbright Exchange Program, and he completed his one-year graduate study, leadership, research, and professional development program at the American University Washington College of Law, Washington, D. C., United States, with specialization in Human Rights Law. Cajetan also holds a Master of Laws (LL.M) Degree in International Human Rights and Humanitarian Law from the American University Washington College of Law, Washington, D. C., United States. He is currently a Senior Associate at KENNA, a leading Litigation and Dispute Resolution law firm in Nigeria.