

## COMPARATIVE ANALYSIS OF DEATH PENALTY LAWS IN NIGERIA, CHINA AND UGANDA

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### ***Abstract***

*Conditions of correctional centers in Nigeria has over the years been of concern to relevant stakeholders. It is particularly demeaning for inmates on death row not only because of the poor custodial conditions, but also because of the self-imposed moratorium regime which makes execution very rare. Adopting the desk top research methodology, this paper attempts a comparative examination of the legal provisions and practice of the death penalty in Nigeria and China, an active death penalty country as well as Uganda with its judicial pronouncements on the application of the sentence. The paper highlights the constitutionality of the death penalty in the three countries, and examines the distinct features in the application of the laws.*

*Nigeria amended its laws to move away from a punitive and retributive position to correction. It provides for the commutation of a death penalty after the inmate must have exhausted all his legal opportunities for reprieve after ten years. This is a far cry from Uganda that recommends a three-year period, considers the mandatory death penalty unconstitutional and is tilting more towards becoming an abolitionist country. Although China remains an active retentionist country, its law and practice remains unique in the practice of the suspended death sentence.*

*The paper recommends that Nigeria reviews its laws and practice in line with other jurisdictions to achieve the observance of the rights of inmates on death row. It should also consider alternatives such as life imprisonment without the option of parole, life imprisonment not being the remainder of the life of the offender. While it is yet being practiced, death penalty should not be mandatory and correctional officers should be trained and retrained on international best practices in the treatment of inmates on death row. The self-imposed moratorium regime should be reconsidered considering that the death row phenomenon is in itself a breach of the fundamental rights of inmates on death row.*

***Keywords:*** *inmates on death row, death penalty laws and practice, Nigeria, Uganda, China*

## INTRODUCTION

The death penalty, also known as capital punishment, is the most severe form of sentence, involving the lawful imposition of death on a person convicted of specified offences which are considered grave, such as murder or treason. Gradually, the practice became embedded in global legal systems as a necessary instrument for justice, deterrence, and retribution.

Gradually as arguments on the fundamental human rights of persons gained ascendancy, there has been significant global shifts away from its use. The considerations have been, apart from human rights, the risk of wrongful convictions and the fact that research has not been able to establish the advantage of the death penalty over such other alternatives like life imprisonment without the option of parole. Countries that have de facto abolished the death penalty no longer execute or pronounce the death penalty in its courts. The retentionists either restrict the application of the penalty to the most severe or grave offences only or operate a self-imposed moratorium regime, where, although the penalty is not totally abolished, active execution rarely takes place.

Proponents of the retention of the death penalty argue that there is no deterrent against grave offences that is as effective as the death penalty. This school of thought is the retributive school, which opine that a person who takes a life should forfeit his. Abolitionists conversely have their arguments rooted in the requirements of fundamental rights for all persons without discrimination. They consider that the death penalty is so final and irreversible that an error will be too costly in the interest of the justice it was designed to serve. It is better to err on the side of caution.

This paper is a review of the law and practice of the death penalty in Nigeria, China and Uganda, highlighting how they balance the requirements of human rights, delivering justice, deterring would be criminals and upholding the entire criminal justice system while retaining the practice of the capital punishment.

## **AN APPRAISAL OF THE LAWS PROVIDING FOR DEATH PENALTY IN NIGERIA**

The Constitution of the Federal Republic of Nigeria (CFRN) <sup>1</sup> expressly makes provisions for death penalty. Right to life is constitutionally provided for as a fundamental human right under Chapter IV, and the right may not ordinarily be derogated from. The CFRN makes express provisions for instances where this right may be validly derogated from. S33 (1) is relevant here, and it provides that:

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

This is the principal legislation authorizing death penalty in Nigeria, and the other legislations that will be examined shortly draw their strength from it. The Criminal Code Act <sup>2</sup> is a law generally applicable in the Southern parts of Nigeria for penalizing a variety of offences described therein as criminal acts while the Penal Code Act<sup>3</sup> is applicable in the Federal Capital Territory, Abuja. The various states in the North have their applicable Penal Codes which are substantially similar in provision. The Administration of Criminal Justice Act <sup>4</sup>2015 stipulates the procedure for carrying out the penalty of death while the Nigerian Correctional Service Act<sup>5</sup> stipulates actions that can be taken by the Chief Judge of a State in the case of an inmate under the sentence of death who had spent more than ten years in custody and has exhausted all legal procedures for appeal.

S17 of the Criminal Code Act provides that subject to the provisions of any other written law, the punishments which may be inflicted under this code are death, imprisonment, caning, fine and forfeiture. S315 and S316 provides generally for the imposition of death penalty for the crime of murder. Under Chapter III, the Penal Code provides generally for punishments and compensation. S68 states that:

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<sup>1</sup> S33(1) Constitution of the Federal Republic of Nigeria, 1999.

<sup>2</sup> CAP C38 LFN, 2004

<sup>3</sup> CAP P3 LFN, 2024

<sup>4</sup> Administration of Criminal Justice Act, 2015

<sup>5</sup> Nigerian Correctional Service Act, 2019

- (1) The punishments to which offenders are liable under the provisions Punishments of this Penal Code are-
3. death;
  4. forfeiture of property;
  5. imprisonment;
  6. detention in a reformatory;
  7. fine;
  8. caning.

Chapter XVIII, Penal Code provides generally for offences affecting the human body, and prescribes the death penalty for various acts causing death. Similarly, Chapter XXVI Penal Code providing for offences against the State (treason) provides for the imposition of the death penalty.

From the provisions of these laws, among others, death penalty is lawful in Nigeria when imposed by the appropriate authority for the commission of crimes stated in the prescribed laws. In *Adeniji v. State*,<sup>6</sup> Oguntade, JCA stated that:

‘Besides, the right to life prescribed under the said Section 30(1) of the Constitution is clearly a qualified right. It is not an unqualified right. It is also not in dispute that the imposition or execution of the death sentence in Nigeria is not subjected to any form of arbitrary discriminatory or selective exercise of discretion on the part of any Court or any other quarters whatever. I therefore entertain no doubt that the death penalty in Nigeria can by no stretch of the imagination be said to be invalid or unconstitutional.’

What the laws, however do not make provisions for is the lengthy wait occasioned by the neglect or failure of the appropriate authority to sign the execution warrant of inmates on death row and the human right abuses occasioned thereby.

The Supreme Court, in the case of *Kalu v. State*<sup>7</sup> stated that if after the death sentence has been passed and the convict is in prison custody, if anything arises outside the normal custody that amounts to ‘torture or inhuman or degrading treatment’, that will be cause of action under the

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<sup>6</sup> (1999) LPELR-6680(CA)

<sup>7</sup> (1998) 13 NWLR (pt.583) p.531

fundamental rights, but not militating against the death sentence. That in such a case, the death sentence stands but a new cause of action has arisen which can be separately enforced and remedied. In other words, that the

‘inhuman and degrading treatment’ outside the inevitable confinement in death row will not make illegal the death sentence, rather it only gives ground for enforceable right under the Constitution.<sup>8</sup>

Though the death penalty remains a legally valid punishment in Nigeria, this legality does not envisage the inordinate torture inmates are subjected to while awaiting execution, which is not being actively carried out in Nigeria.

There is no evidence on the effectiveness of the death penalty over and above other alternative sentences like life imprisonment, especially where the life imprisonment is without the option of parole.<sup>9</sup> There is need to consider bringing Nigerian laws in consonance with its professed rationale for punishment, considering especially the current world trend of correction and the need to observe the human rights of all persons including prisoners who have committed the most serious offences. The State does not need to turn itself into a pity-less authority killing its citizens because a handful of its citizens are not law abiding.

## **APPRAISAL OF THE LAWS PROVIDING FOR CUSTODY AND EXECUTION OF CONDEMNED PRISONERS IN NIGERIA**

The laws that provide for the custody and execution of condemned prisoners in Nigeria are basically The Nigerian Correctional Service Act, 2019, Administration of Criminal Justice Act, 2015 and The Nigeria Correctional Service Standing Orders Custodial (Revised Edition), 2020.

### **THE NIGERIAN CORRECTIONAL SERVICE ACT, 2019 AND ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015**

The Nigerian Correctional Service Act, 2019 (NCSA) is a legislation that changes the nomenclature of punishment in Nigeria. It changes Prison Service to Correctional Service, thereby changing the punitive stance of criminal administration in Nigeria to correction. It makes

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<sup>8</sup> Adekunle v. A-G Ogun State (2014) LPELR-22569(CA)

<sup>9</sup> Kovandzic, T.V. et al. (2009) Does the death penalty save lives? New evidence from State panel data, 1977 to 2006. *Criminology & Public Policy*, 8(4) 803-844

provisions for the treatment of Inmates on Death Row (IDR) in Nigerian Correctional Facilities as well as the procedure for their execution. Administration of Criminal Justice Act, 2015 is the procedural law in the administration of criminal justice in Nigeria.

S12 (1a, b) of the NCSA 2019 provides for the legal powers of the correctional officer to hold custody of the inmate. It states that

- (1) Every person confined in a Custodial Center—
  - (a) is deemed to be in the legal custody of the Superintendent; and
  - (b) shall be subject to discipline and regulations made under this Act, whether or not the person is within the precincts of the Custodial Center.
- (2) In the case of an inmate under sentence of death, the Superintendent shall, at such time on the day on which the sentence is to be carried out and from that time until the actual carrying out of the sentence, ensure that--
  - (a) the inmate is in legal custody of the Sheriff;
  - (b) the Sheriff has jurisdiction and control over that portion of the Custodial Center where the inmate is confined and the Custodial Officers are deployed, as may be necessary for the safe custody during that period and for the purpose relating to such custody;

The import of these provisions is that though the correctional authority has powers for the legal custody of the IDR, such powers is only up until the day of the execution, on which day legal custody rests on the Sheriff.<sup>10</sup> On that day, the Sheriff assumes jurisdiction and control not only on the IDR to be executed, but also on the correctional officers attached to him for the purpose of the execution and the relevant portion of the custodial center.

The law that empowers the Sheriff to so act is the Sheriffs and Civil Process Act.<sup>11</sup> S12 of the Act provides for the Sheriff to carry out the execution of death on the IDR. It provides that:

Where sentence of death has been pronounced upon any person and the President or Governor as the case may be, has ordered that the sentence be carried into execution, the same shall be

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<sup>10</sup> S298, Nigerian Correctional Service Standing Orders Custodial (Revised Edition), 2020

<sup>11</sup> Sheriffs and Civil Process Act, CAP S6, Laws of the Federation of Nigeria, 2004

carried into execution by the sheriff or a deputy sheriff or by some person appointed by the sheriff or deputy sheriff.<sup>12</sup>

Thus, while the duty of execution rests squarely on the Sheriff, the Correctional Officer shall render all necessary assistance to ensure that the Sheriff has a successful execution. Prior to the day of execution, the Superintendent shall ensure that the place where execution is to take place is in good mechanical order, such that the execution will run as smoothly as possible. There should be sufficient stock of such items as rope, pinioning apparatus, hood, bags of sand and thread.<sup>13</sup> This provision suggests that execution mode provided for is by hanging<sup>14</sup> and not also by lethal injection as prescribed by the Administration of Criminal Justice Act, 2015. Whichever mode employed; no execution shall take place except the death warrant is duly signed by the Governor of the State<sup>15</sup> or the President in the case of a federal offence.

Under categorization of custodial centers, the IDR may not be kept in any other custodial center except a maximum (or convict) custodial center, which is such facility with provisions for a death row and can receive all classes of inmates, such as long term, short term, awaiting trial male and female.<sup>16</sup> While undergoing trial, an inmate may be held in any center, but upon conviction, such will be transferred to the appropriate facility, which usually is the maximum custodial facility closest to it.

Furthermore, an IDR cannot be kept together with other inmates who are not condemned even though they are within the same facility. They have to be kept in a separate cell.<sup>17</sup> Adequate categorization of inmates remains a tool for effective administration of the custodial center and management of the inmates. IDR have unique requirements and exigencies, particularly psychological needs. This is why the law requires that unlike other categories of inmates, the Superintendent of the facility and medical doctor shall visit them daily to attend to their peculiar needs. The custodial center keeper shall also make more frequent visits to the IDR

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<sup>12</sup> S298, NCS Standing Orders, 2020

<sup>13</sup> S297, NCS Standing Orders, 2020

<sup>14</sup> See S303, NCS Standing Orders, 2020 which directs that casts shall not be taken off the head of an executed inmate.

<sup>15</sup> S299, NCS Standing Orders, 2020

<sup>16</sup> Nigeria Prison Service Lecture Manual. p8

<sup>17</sup> S275 Nigerian Correctional Service Standing Orders Custodial (Revised Edition), 2020

cells.<sup>18</sup> In the absence of this, they may not fare well with other inmates who are non-IDR, and may pose danger to themselves and others. Pending the lawful execution of the IDR, all efforts must be geared towards the preservation of his life and observance of his human rights. Thus, his right to life as provided by the constitution is upheld until lawful execution, which is the only approved derogation. He is also carefully prevented from the commission of further offences because having bagged the most grievous punishment possible, no other punishment may equal whatever new offence that may be committed.

The law provides for the right of the IDR to appeal his sentence, and it is the duty of the Superintendent of the custodial center to bring this to his attention and offer all necessary assistance in the pursuit of such appeal.<sup>19</sup> Upon the exercise of all the legal procedures for appeal, and a period of ten years have elapsed, the Superintendent is required to present such IDR for consideration for commutation of the death penalty to life imprisonment through the State Controller.<sup>20</sup> While on death row, the IDR is subjected to special surveillance which the other inmates are not a subject of. However, all these shall cease if the appeal or application for commutation of the death penalty succeeds.<sup>21</sup>

It remains the law in Nigeria that a pregnant woman, though sentenced to death, cannot be executed until she is delivered of her baby. The relevant provision highlights the effect of discovery of pregnancy at sentencing and at execution respectively. Though a court may validly pronounce a sentence of death on a pregnant woman, execution cannot be carried out. S404 Administration of Criminal Justice Act provides that:

Where a woman found guilty of a capital offence is pregnant, the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned.<sup>22</sup>

It remains unclear, however, how a female inmate under the custody of the superintendent of correction can or may become pregnant, especially because conjugal visits are unknown to our laws. Also, considering the requirement for proof of criminal complicity beyond reasonable

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<sup>18</sup> See s287, NCS Standing Orders, 2020

<sup>19</sup> See s276, NCS Standing Orders, 2020

<sup>20</sup> See s275 (b) NCS Standing Orders, 2020

<sup>21</sup> S297, NCS Standing Orders, 2020

<sup>22</sup> See also S39 (2) Criminal Code Act 2004



doubt, and the history of protracted trial bedeviling our criminal justice, it is very unusual that a criminal trial for capital offence may be concluded within nine months, or less. Discovery of pregnancy at sentencing presumes that the pregnancy was not obvious, else the judge would have made the appropriate orders. It is the opinion of this study that discovery of pregnancy either at sentencing or execution speaks of dereliction of duty on the part of the Superintendent of Correction or his subordinates at one point or the other. The Nigerian Correctional Service Standing Orders Custodial (Revised Edition)<sup>23</sup> provides for the treatment of pregnant inmates, but did not contemplate a pregnant IDR.

### **THE NIGERIAN CORRECTIONAL SERVICE STANDING ORDERS CUSTODIAL (REVISED EDITION) 2020**

The body of rules guiding the day-to-day running of custodial centers in Nigeria is the Nigerian Correctional Service Standing Orders Custodial (Revised Edition)<sup>24</sup>. This is a subsidiary legislation which derives its strength from the Nigerian Correctional Service Act, 2019. S33 of the Act empowers the Controller General of Correction to make regulations, standing orders and take any other administrative action as required for the effective implementation of the Act. Although the 2020 Standing Orders did not start with a commencement section, the old standing orders in its commencement section states that the orders represent the day-to-day rules and regulations guiding the prisoners, staff, administration of prison and organization and control.<sup>25</sup> As earlier stated, the Standing Orders made copious provisions for the treatment of IDR.

Female inmates undergo pregnancy tests not later than 14 days of being admitted into the custodial center.<sup>26</sup> In the event of discovery of pregnancy, apart from provision of all necessary support, the committing court and the next of kin shall be duly informed. As long as this requirement is complied with, it is very unlikely that a pregnant woman will be found on death row. In the rare event that it occurs, the Administration of Criminal Justice Act<sup>27</sup> provides that the execution shall be suspended until the baby is delivered and weaned.

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<sup>23</sup> See Order 11, 562-573

<sup>24</sup> Nigerian Correctional Service Standing Orders (Custodial) Revised Edition 2020

<sup>25</sup> Commencement section of the NPS SO (Revised Edition), 2011

<sup>26</sup> See S564 NCS Standing Orders, 2020

<sup>27</sup> S404 Administration of Criminal Justice Act, 2015

## COMPARATIVE ANALYSIS OF THE LEGAL PROVISIONS IN OTHER JURISDICTIONS PRACTICING DEATH PENALTY

### CHINA

The choice of China in this study is premised on the fact that China topped the world in the imposition of the death penalty. According to Amnesty International, China's death sentences and executions have consistently contributed 60-80% of the total death sentences and executions in the world.<sup>28</sup> China ranks among the top five executioners in the world.<sup>29</sup> In 2016, China executed more than all other countries in the world put together.<sup>30</sup> China has a rather long history of imposition of the death penalty, being embedded in its traditional culture. Though the imposition of death penalty can be traced in the traditional history of Nigeria, its practice is quite different from what obtains in China. Pre-Colonial practice of death penalty in Nigeria is only as a last resort and other alternatives were adopted wherever possible.<sup>31</sup> Chinese traditional sayings like "a life for a life," "killing one to warn a hundred," "killing a chicken to warn a monkey" are embodiments of these retributive and deterrent beliefs<sup>32</sup>. While it is yet unlikely that China will abolish the death penalty, its official policy on the death penalty has been to prevent excessive execution and execute with caution. The Supreme Court had been reassigned the task of making a final review and approving all death sentences in 2007. This has been widely viewed as an effort to implement the death penalty with uniformity, fairness, and caution.<sup>33</sup> The current Criminal Law stipulates 68 criminal offenses eligible for capital punishment, although it has been argued that most of these provisions are rarely used.<sup>34</sup> About one third of the capital offenses have rarely been used in practice while

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<sup>28</sup> Hong L.U. 2008. China's death penalty: Reforms on capital punishment.

<sup>29</sup> Amnesty International. 2017. Death Penalty: World's biggest executioner China must come clean about 'grotesque' level of capital punishment. Accessed 14 April, 2025 from <https://www.amnesty.org/en/latest/news/2017/04/china-must-come-clean-about-capital-punishment/>

<sup>30</sup> Ibid

<sup>31</sup> Aborisade, O. 2016. Interrogating Capital Punishment and Indigenous Yoruba African Culture. International Journal of History and Philosophical Research. Vol.4., No.2, pp.23-29. Accessed 14 April, 2025 from <https://www.eajournals.org/wp-content/uploads/Interrogating-Capital-Punishment-and-Indigenous-Yoruba-African-Culture.pdf>

<sup>32</sup> Amnesty International. 2008. Op cit

<sup>33</sup> Ibid

<sup>34</sup> Ibid

another one third consisted of nonviolent, non-lethal offenses such as corruption, economic offenses, and public order offenses.

These 68 offences have been categorized into crimes endangering national security, crimes endangering public security, crimes undermining the socialist market economic order, crimes infringing upon the rights of the person and his democratic rights, crimes encroaching on property, crimes disrupting the order of social administration, crimes endangering the national defense interest, crimes of graft and bribery, crimes of violating duties of military servicemen.<sup>35</sup> However, not all of these offences carry the mandatory death sentence. Only those offenses which meet certain aggravating conditions carry a mandatory death sentence e.g. drug trafficking.

### **CHINA'S DEATH PENALTY UNIQUE CHARACTERISTICS**

Much like what is operational in Nigeria and some other jurisdictions, China does not extend the application of the death penalty to minors and pregnant women and makes legal representation for capital offenders mandatory. A unique feature however is suspended death sentence, which may be used when an offender should be sentenced to death but immediate execution is considered not essential. This is in line with China's policy of preventing excessive executions and executing with caution.<sup>36</sup> Under China's suspended death sentence regime, a two-year reprieve is pronounced simultaneously with the death sentence where the judge considers that immediate execution was not essential and the criminal is given opportunity for reformation. This provision confers discretion on the judge. During this period, there are three possibilities.<sup>37</sup> Where it is determined that the condemned had shown true repentance, the sentence will be commuted to life imprisonment. Where in addition to showing true repentance, the offender had performed meritorious service, the penalty may be reduced to a fixed term of fifteen to twenty years. However, where it was decided that the offender had resisted reform, such will be executed by shooting.

Unlike what obtains in Nigeria, the time spent on the death row is relatively short. According to China's Criminal Procedure Law (1996), 'after receiving an order to execute the death sentence

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<sup>35</sup> Ibid

<sup>36</sup> Hong, L.U. 2008. Op cit

<sup>37</sup> Seet, M. 2017. China's suspended death sentence with a two –year reprieve: humanitarian reprieve or cruel, inhuman and degrading punishment? NUS Law working paper. Accessed 14 April, 2025 from [https://law.nus.edu.sg/wp-content/uploads/2020/04/006\\_2017\\_Matthew-Seet.pdf](https://law.nus.edu.sg/wp-content/uploads/2020/04/006_2017_Matthew-Seet.pdf)

from the Supreme People's Court, the people's court at lower levels shall, within seven days, deliver the criminal for execution of the sentence.'<sup>38</sup> The Supreme Court of China was in 2007 entrusted with reviewing cases given a death sentence and has recruited and trained a large number of judiciary officers for its expanded criminal division. This step was to re-affirm the policy of preventing excessive executions and execution with caution. Other steps taken in pursuit of this policy include setting up long term prison sentences; restricting the scope of capital offenses; curbing police torture and coerced confession; and making death sentence decisions more uniform and fairer by going through the central authority for the final review and approval of capital cases. It was argued that the reason why death penalty was used frequently in China was because there were no other comparable alternatives. Currently by law, the longest prison sentence is 15 years. Even though life imprisonment is available, the average time an offender served behind bars with a life imprisonment sentence is 15 years. Thus, it is important to set up longer prison terms (i.e., 20-30 years), or to make life imprisonment without the possibility of parole an option, so as to reduce the need for the death penalty. The case is different in Nigeria where life imprisonment is actually the whole remainder of the life of a prisoner. This study condemns the lack of specificity of the period of life imprisonment in jurisdictions that practice it as such.

There are two execution methods in China: execution by shooting or by lethal injection. Lethal injection was introduced in 1997 and in remote western regions first, and then gradually implemented in other jurisdictions. Hanging is the most common mode of execution in Nigeria<sup>39</sup>.

## UGANDA

The choice of Uganda is due to the great influence the judicial legislation embarked upon by its Supreme Court has had, not only on the country itself but also on other African countries. The decision in Kigula's case has occasioned massive abolitionist moves, though the country is yet a retentionist country.<sup>40</sup> Unlike Nigeria, judicial legislation has paved a smooth way for the abolition

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<sup>38</sup> Ibid

<sup>39</sup> Akingbehin, E.O. 2012. Capital Punishment in Nigeria a Critical Appraisal. A Thesis Submitted to University of Lagos School of Postgraduate Studies Phd Thesis and Dissertation, 285pp. Accessed 14 April 2025 from <https://ir.unilag.edu.ng/items/b81e7098-7c70-44fb-a0a7-e4143504dafa>

<sup>40</sup> Mujuzi, J. D. 2009. International Human Rights Law and Foreign Case Law in Interpreting Constitutional Rights: The Supreme Court of Uganda and the Death Penalty Question. 2 AHRLJ. 576-589. Accessed 14 April, 2025 from <https://www.ahrlj.up.ac.za/mujuzi-jd-2009-2>

move in Uganda. The decision in the landmark case of Suzan Kigula and 417 Ors<sup>41</sup> has only proven in Uganda that although the death penalty is constitutional, other related issues such as the duration between pronouncement and execution, and the mode of execution may be unconstitutional. In this case, the entire 417 inmates on death row had petitioned to have the death penalty declared unconstitutional and abolished.<sup>42</sup> A serious case was similarly made for the mandatory death sentence which fetters the discretion of the judge and an appropriate amendment of the constitution.<sup>43</sup> From this judgement, dicta in favor of abolition of the death penalty were enunciated.

‘Courts are compelled to pass the death sentence because the law orders them to do so but not all the offences can be the same.’ Justice Okello, leading Justice.

Justice Amos Twinomujuni added that ‘it is the duty of the judiciary to impose any sentence after due process.’

Apart from being a precedent of strong persuasive value within the region of Africa, the decision in Kigula’s case has restored judges’ discretion, removed mandatory death penalty, proposed a reduction in the offences that attracted the death penalty and redefined the scope of life imprisonment. This invariably led to the reduction in death row inmates as seen earlier.<sup>44</sup>

Article 22(1) of the Ugandan Constitution provides that no person shall be deprived of life intentionally, except in execution of a sentence passed by a Court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court. This means that much like what obtains in Nigeria, the Ugandan Constitution provides for the legality of the death penalty. The difference however lies in the fact that Uganda had been more actively involved in the move towards an abolition, through a Constitutional review and judicial legislation. In the celebrated Kigula’s case, the Supreme Court of Uganda had made pronouncements on the constitutionality of the death penalty, unconstitutionality of the mandatory death penalty because it robs judges of discretion in

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<sup>41</sup> (2005) AHRLR 197 (UgCC2005)

<sup>42</sup> Mujuzi, J.D. 2009. Op cit

<sup>43</sup> Full judgement available at <https://www.fidh.org/IMG/pdf/Supremecourt>

<sup>44</sup> Amnesty International. 1993. Uganda the death penalty: a barrier to improving human rights. AI Index: AFR 59/03/93

mitigating sentences, that hanging as a mode of execution is not cruel and inhuman, and that the death row phenomenon is unconstitutional because it is cruel and inhuman treatment.<sup>45</sup>

In 2001, a Constitutional Review attempt was made, the result of which was not ready until 2004, though a retention was favored.<sup>46</sup> According to Amnesty International, there were at least 525 inmates on death row in Uganda in December 2004. This figure has however declined in recent years. By 2013, there were 420 death row prisoners, 167 of which were to receive re-sentencing under the Kigula judgment. By March 2016, this figure has further reduced to 208.<sup>47</sup> Presently, the figure has reduced further to about 145 persons. The country also has a Human Rights Commission, which though did not recommend an abolition to the Constitutional Review Commission but did recommend the reduction of the offences that attracted the death penalty to exclude especially political offences.<sup>48</sup>

Uganda is a state party to seven of the major International Human Rights treaties (the ICESCR, the ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families),<sup>49</sup> as well as to the First Optional Protocol to the ICCPR and the two Optional Protocols to the Convention on the Rights of the Child (on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography), the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' rights on the establishment of an African Court on Human and Peoples' rights).<sup>50</sup> Uganda is also a party to the main international humanitarian law instruments, in particular the Geneva Conventions of 12 August 1949 for the

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<sup>45</sup> Mujuzi, J.D. 2009. Op cit

<sup>46</sup> FIDH. 2005. Uganda: Challenging the Death Penalty-International fact-finding mission. Available at [www.fhri.or.org](http://www.fhri.or.org)

<sup>47</sup> Cornell Centre on the Death Penalty Worldwide. Death Penalty Database. Uganda. Available at <https://www.deathpenaltyworldwide.org>

<sup>48</sup> Op cit

<sup>49</sup> Mujuzi, J.D. 2009. Op cit

<sup>50</sup> Ibid

protection of victims of war, and the Additional Protocols thereto, of 1977.<sup>51</sup> Reference to international instruments significantly influenced the decision in Kigula's case. This portrays a commitment on the part of the country to the human rights requirements of the international criminal justice system which is expected to receive a domestication, especially as it relates to the abolition of the death penalty.

Another unique outcome of the Kigula's case is that the court ruled that any IDR who had been so for 3 years without execution should have the sentence automatically commuted to a life imprisonment without the option of parole. This is quite different from Nigeria where an IDR must spend a minimum of ten years before becoming eligible for commutation of sentence.

It is noteworthy that the majority of Ugandan population favors a retention, but the prison officers mostly advocate for an abolition. It had been suggested that this is likely due to their involvement in the execution process.<sup>52</sup> The reason for the support by the executive is rather based on facts and not on emotional and psychological attachment to condemned prisoners. The executive has decided in favor of retention because death penalty had been a very effective means of checking gross human right abuses that were prevalent in Uganda.<sup>53</sup> Article 129 of the Constitution provides for hierarchy of courts, which invariably provides for the right of appeal of the condemned prisoner.

The Penal Code provides the death penalty for offences such as Treason, Smuggling, Murder, Detention with sexual intent, Kidnapping, Rape, Defilement and Robbery. The offences of murder, treason and aggravated robbery attract a mandatory death penalty on conviction. Comparable to the Nigerian situation, the increase in certain kinds of offences (kidnapping and terrorism) led to the expansion of the scope of the death penalty. Under the Terrorism (Prevention) Act<sup>54</sup>, additional offences are punishable by a mandatory death sentence. Sections 7 and 8 of the Act defines the offences that amount to terrorism and the death penalty on conviction where the act leads to the death of any person. Due to the unprecedented increase in the spate of the criminal activity, the

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<sup>51</sup> Ibid

<sup>52</sup> Mujuzi, J. D. 2009. Op cit

<sup>53</sup> Ibid

<sup>54</sup> Terrorism (Prevention) Act, 2011

Terrorism (Prevention) (Amendment) Act<sup>55</sup> introduced several sections to deter the increase and adequately punish perpetrators. Banditry and kidnapping have become increasingly frequent occurrences in Nigeria, a ‘thriving business’ for men of the underworld, posing a serious threat to the safety and security of citizens in their homes, farmlands, and along major highways.<sup>56</sup> Studies have shown that banditry is largely driven by the pursuit of wealth in regions burdened by poverty, significantly compromising public safety and security in the states examined.<sup>57</sup> Among several innumerable occurrences, notable incidents include the abduction of 204 Chibok Secondary School girls in 2014, the kidnapping of Dapchi schoolgirls in 2018, the Owo Catholic Church massacre in 2022, and the Kaduna–Abuja train attack in the same year.<sup>58</sup> Although the Federal Government has made efforts to address the deteriorating security situation, such initiatives appear insufficient and overstretched. The immediate response of legislature was to introduce the death penalty with the hope that willing perpetrators will be deterred and security of lives and properties of Nigerians will be secured.

Article 121 of the Constitution of the Republic of Uganda provides for the Prerogative of Mercy. Pursuant to Article 121(1) of the Constitution, the Committee consists of the Attorney General and six prominent citizens of Uganda appointed by the President who should not be members of Parliament, members of the Uganda Law Society or of the District Council.

The Uganda Prisons Act of 1958 Cap 304 Laws of Uganda 2000 is an Act that consolidates the law relating to Prisons and provides for the organization, powers and duties of prison officers, and for matters incidental thereto. There are two parallel systems of criminal justice in Uganda, each with its own method of execution. Military execution is by firing squad while S 99(1) of the Trial of Indictments Act (Cap 23 Laws of Uganda) provides hanging as the legal means of execution. The Uganda Prisons Act provides for the establishment of a Ugandan Prison Service with reformation, rehabilitation of offenders, safe and secure custody of inmates as its mandate. There is also The Ugandan Prisons Service Policy Document 2000 and Beyond which sets out the

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<sup>55</sup> Terrorism (Prevention) (Amendment) Act, 2013

<sup>56</sup> Igiebor, G.O. 2024. Banditry in Nigeria: Implications for National Security. African Journal of Politics and Administrative Studies, AJPAS, 17(2): 1-26 Accessed 15 April, 2025 from <https://dx.doi.org/10.4314/ajpas.v17i2.1>

<sup>57</sup> Ibid

<sup>58</sup> Ibid



mission statement of Prisons Service of Uganda, as part of an integrated justice system. A major feature of this document is humane treatment of all categories of inmates. This is in line with the requirements of international treaties to which Uganda is a signatory.

## **RECOMMENDATIONS**

It is recommended that Nigerian courts, through its judgements review the country's stance on the death penalty. While it may retain its use, application must be in line with international requirements for observance of the human rights of all citizens, including inmates and IDR. Alternatives to the death penalty, such as life imprisonment without the option of parole can be introduced especially where there are signs of the possibility of rehabilitation upon the recommendation of the Superintendent of the correctional center. The legal provisions for review of death penalty after the inmate had been on death row for ten years is inappropriate, being too long, since no corrective measure or activity can take place during this 'wait period'. The period during which the inmate may explore and exhaust his appeal should be expediated such that considerations for commutation can be explored. Correctional officers should be properly trained on the implications and application of the sentence. The retention of the death penalty in the absence of active execution is a breach of the human rights of IDR. The death row phenomenon which sets in after all rights to legal appeal has been exhausted is a breach of the rights of the inmates. The time between sentence and execution should be reduced reasonably. There should also be a review of the extent of the life imprisonment which should not be the entire remainder of the life of the offender.

