



**MEMORANDUM IN SUPPORT OF THE
ABOLITION OF THE DEATH PENALTY
IN NIGERIA**

**Directed to the Attorney General and Members of the National Assembly of
Nigeria**

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Death Penalty Project's Memorandum in Support of the Abolition of the Death Penalty in
Nigeria.*

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I. Authors of the Memorandum

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¹ For further information about The Death Penalty Project, please visit www.deathpenaltyproject.org.

² The Death Penalty Research Unit at the University of Oxford works with civil society, legal practitioners, policymakers and academics to produce, exchange and disseminate knowledge on the law and practice of capital punishment. For further information, please visit <https://www.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit>.

³ The Death Penalty Research Unit at the University of Oxford works with civil society, legal practitioners, policymakers and academics to produce, exchange and disseminate knowledge on the law and practice of capital punishment. For further information, please visit <https://www.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit>.

⁴ Hood, R. and Hoyle C., *The Death Penalty: A Worldwide Perspective*. 5th edn. (2015).

II. Executive Summary

As Africa's largest democracy, Nigeria is often regarded as a bellwether of progress, rights and freedoms. However, as other African states join a global movement towards abolition of the death penalty, Nigeria stands as a stark outlier. Whilst other countries have recently eliminated the death penalty as a cruel and arbitrary punishment,⁵ Nigeria is increasingly imposing it through state laws as a response to heightened insecurity and violence.

To abolish the death penalty and remain aligned with the country's international obligations, Nigeria need not forego efforts to protect the security of its citizens. Rather, abolition of the death penalty is a step towards safer communities and a fairer justice system. Nigeria's political leaders can abolish the death penalty through legislative action. This Memorandum recommends an Executive Bill to amend the 1999 Constitution to protect the right to life without exception and to declare the death penalty to be in violation with the Constitution and Nigeria's international treaty obligations. Abolition of the death penalty in Nigeria is not only desirable but eminently possible.

Ending the death penalty sends a powerful message that a country seeks to advance human rights, to recognize the dignity inherent in all its people, and to acknowledge ongoing flaws in their own criminal justice systems. Since 2020, Kazakhstan, Sierra Leone, Chad, Papua New Guinea, the Central African Republic, Equatorial Guinea, Zambia, Ghana, Zimbabwe and the U.S. states of Virginia and Colorado have abolished the death penalty, either for ordinary crimes or for all crimes. Barbados and Malaysia repealed the *mandatory* death penalty in 2022 and 2023 respectively. Presidents and governors of these states declared capital punishment to be inhumane and held the sanctity of life as a national value.

Notwithstanding this trend towards abolition, being driven by its neighbours in the African Union, Nigeria continues to sentence people to death. The death penalty remains the *mandatory* punishment for murder and armed robbery, as well as for multiple other offences in the twelve Northern States, contrary to Nigeria's international obligations under the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR).

⁵ Eight states of the African Union have abolished the death penalty for all crimes or for ordinary crimes since 2017. These are Equatorial Guinea, Burkina Faso, Zambia, Ghana and Zimbabwe (abolished for ordinary crimes only); and Chad, Sierra Leone and the Central African Republic (abolished for all crimes).

At least 246 new death sentences were imposed in 2023; this is a significant rise of more than 300% from the 77 death sentences handed down in 2022.⁶ A spokesperson for the Nigerian Correctional Service indicated that, as of September 2024, 3,590 people – 3,517 men and 73 women – were on death row in Nigeria.⁷

Despite the existence of capital punishment in law, Nigeria has not routinely used the punishment in practice. No executions have been carried out since December 2016. State governors continue to be reluctant to sign death warrants. Nonetheless, Nigeria continues to violate its international obligations by sentencing an increasing number of people to death, routinely violating their due process rights. Furthermore, people sentenced to death experience the stigmatisation and psychological impact of living under a sentence of death, and their families endure strong secondary trauma. Importantly, the assertion that family members of homicide victims (hereafter, ‘co-victims’) require the execution of an offender in order to heal is not borne out by academic research. In fact, studies have shown that not only has capital punishment failed to prove therapeutic for co-victims, but it has proven anti-therapeutic due to prolonged engagement with the capital appeals process, causing significant psychological harm to co-victims. Further, capital punishment does not reflect wider public opinion regarding the inherent dignity of human life. The overcrowding crisis facing Nigerian prisons has laid bare the vulnerability of those imprisoned, including those facing death sentences, who are unable to access adequate healthcare or basic sanitation.

This Memorandum provides relevant information on global trends and on the administration of the death penalty in Nigeria that reinforces the justification for abolition. During the World Day Against the Death Penalty in October 2023, Attorney General of the Federation and Justice Minister, Lateef Fagbemi (SAN), stated that many countries, including Nigeria, are being encouraged to consider reforms on capital punishment. “The World Day against the Death Penalty is not merely a day of solemn remembrance, but a call to action,” Fagbemi said. “It is a day when we, as global citizens, come together to emphasise that every life is sacred, and no

⁶ Amnesty International ‘Global Report: Death Sentences and Executions 2023’, (2024), 57. Available at: <https://www.amnesty.org/en/documents/act50/7952/2024/en/> (hereinafter ‘Amnesty International 2023 Global Report’).

⁷ Punch NG, ‘3,590 inmates on death row in Nigeria — NCoS’ Agency Report (Sep. 4, 2024). Available at: <https://punchng.com/3590-inmates-on-death-row-in-nigeria-ncos/>.

mistake or crime should ever push us toward actions that we cannot reverse.”⁸ This Memorandum echoes the Attorney General’s sentiments and affirms the reasons why abolition is not only desirable, but necessary. The authors draw on evidence from around the world that arbitrariness is inherent in all criminal justice systems which still impose the death penalty; that the death penalty does not deter murder or other serious crimes to a marginally greater extent than does the threat or application of lengthy terms of imprisonment; and that wrongful convictions are inevitable in every jurisdiction, but particularly where procedural safeguards are inadequate. Given existing attitudes amongst key stakeholders promoting abolition in Nigeria and overwhelming evidence of flawed criminal justice systems in *all* countries retaining the death penalty, the Memorandum argues that the Federal Government of Nigeria should act now to end the death penalty.

The Memorandum affirms that abolition of the death penalty can be achieved swiftly through executive action and that capital punishment can be replaced with a humane, safe and flexible system, bringing Nigeria’s criminal law in line with international best practices. Finally, in recommending the removal of the death penalty, the Memorandum maintains that *mandatory* minimum terms of imprisonment (e.g. life imprisonment) can breach an individual’s right to a fair trial and risk similar disproportionality. The best course is to replace a death sentence with maximum, non-mandatory, penalties of life imprisonment.

III. Background: Nigeria’s expanding use of the death penalty

In 2003, the Federal Government mandated a National Study Group on the death penalty. Its report, published in 2004, recommended an official moratorium on the use of the death penalty until such time as the criminal justice system could ensure “fundamental fairness in capital cases and minimize the risk that innocent people will be executed.”⁹ The report also recommended that the sentences of all people on death row whose appeals had been concluded at that time should be commuted to life imprisonment.¹⁰ Since those recommendations were published, no further steps have been taken to limit the application of the death penalty.

⁸ Dania, O. ‘Death penalty outdated, should be abolished – Stakeholders’ Punch NG (Oct. 12, 2023). Available at: <https://punchng.com/death-penalty-outdated-should-be-abolished-stakeholders/>.

⁹ HURILAWS, LEDAP and the World Coalition against the Death Penalty, ‘Joint Stakeholder Report for the United Nations Universal Periodic Review’ Joint Submission no. 18 submitted for the Third Universal Periodic Review cycle (2018). Available at: <https://www.ohchr.org/en/hr-bodies/upr/uprng-stakeholders-info-s31>.

¹⁰ ‘The Report of the National Study Group on Death Penalty’, Abuja, August 2004, 81.

Rather, over the intervening two decades, Nigeria has expanded the number of crimes punishable by death to include offences such as kidnapping, banditry and cattle rustling. This expansion has been inconsistent between regions and reflects attempts by federal and state governments to address Nigeria's deteriorating security situation.¹¹

Nigeria imposes the death penalty through both federal and state laws. There are notable similarities between the States in terms of the punishments imposed for serious criminal offences. However, States have the power to determine which offences are punishable by death, either on a mandatory or discretionary basis. In this Memorandum, we have used examples from the Criminal Code Act, which is applicable to the Southern States, and the Penal Codes in several Northern Sharia States. We have not undertaken an extensive review of the Penal Codes in all the States of Nigeria. What is apparent is that the death penalty is *regularly* imposed in Nigeria, and it is imposed *on a mandatory basis*, for some offences, in the majority of States.

For example, capital punishment remains the mandatory sentence for murder and armed robbery. In the twelve Northern States in which Sharia law is applicable, the number of crimes punishable by death extends to offences of adultery, rape, incest, robbery (punishable by crucifixion if death was caused and property was seized), sodomy, lesbianism and blasphemy (in Kano and Kaduna states). As a result, Nigeria has one of the largest known death row populations of any country in the world,¹² while rates of violence and insecurity have not diminished.

There is no credible evidence to suggest that the death penalty is more effective as a deterrent than terms of lengthy imprisonment, either for murder or any other offence for which it is currently being applied in Nigeria. For instance, Adamawa State introduced the death penalty as a punishment for kidnapping through the Adamawa State Penal Code Law, 2018. In the following year, at least 300 people were kidnapped in that state.¹³ Similar examples can be drawn across various states, where the use of the death penalty is conceived of as a solution to complex and

¹¹ The National Drug Law Enforcement Agency Act (Amendment Bill) 2024 proposed by the Senate prescribed the death penalty for drug trafficking offences; this was amended after a conference committee of the two chambers of the National Assembly in November 2024. The bill now prescribes life imprisonment for certain drug-related offences. See Ogundapo, A. 'National Assembly amends NDLEA Act, approves life imprisonment for drug traffickers', Premium Times (Nov. 21, 2024). Available at: <https://www.premiumtimesng.com/news/more-news/756159-national-assembly-amends-ndlea-act-approves-life-imprisonment-for-drug-traffickers.html>

¹² There is a lack of data on countries with death row populations estimated to be higher than that of Nigeria; these include China and Iran.

¹³ Tade, O. 'Kidnapping in Nigeria: criminalising ransom payment isn't working - families need support', The Conversation (May 9, 2023). Available at: <https://theconversation.com/kidnapping-in-nigeria-criminalising-ransom-payment-isnt-working-families-need-support-204054>.

varied security issues but has had no measurable impact on crime rates. In fact, research by Amnesty International demonstrates “an *increase* in general insecurity, unlawful killings, and kidnap for ransom *despite the introduction of the death penalty* to crimes of banditry, kidnapping, cattle rustling, and cultism.”¹⁴

Capital punishment is not an acceptable or effective solution to insecurity. Furthermore, it exacerbates the challenges facing Nigeria’s criminal justice system by contributing to overcrowded, poorly equipped prisons. This expanding use of the death penalty puts Nigeria at odds with the majority of the African Union and the international community.

IV. Global trend towards universal abolition

The last three decades have witnessed an unprecedented global rate of abolition of the death penalty. 127 countries have now embraced abolition of the death penalty, leaving just 30 countries retaining capital punishment in law and in practice. A further 43 countries currently have the death penalty in law but have not carried out an execution for ten years or more; these are regarded as ‘abolitionist de facto’ (ADF) by the United Nations (UN). More than two thirds of countries worldwide have abolished the death penalty in law or in practice. Additionally:

- Executions were recorded in 16 countries in 2023, the lowest number of countries to date, and in only two in the African Union: Egypt and Somalia.¹⁵ Countries who carried out executions in 2023 make up just 8% of UN member states.
- In November 2024, the Third Committee of the United Nations General Assembly (UNGA) approved a resolution calling for a moratorium on global executions, with a view towards full abolition.¹⁶ This was adopted by the UNGA on 17th December 2024.¹⁷ This is the tenth time since 2007 that the UNGA has voted to adopt a resolution calling for a moratorium on executions. The number of states voting in favour of this resolution has risen from 104 in 2007 to 130 in 2024. The number of states voting against the resolution has steadily decreased. In the recent vote, Nigeria was among the 22 states which abstained.

¹⁴ Amnesty International, ‘Not A Quick Fix to Insecurity: The death penalty as an ineffective deterrent to crime’ (May 16, 2023), italics added. Available at: <https://www.amnesty.org/2023/05/16/nigeria-not-a-quick-fix-to-insecurity/>

¹⁵ Amnesty International 2023 Global Report, 10.

¹⁶ UN Press Release, ‘Texts of Trafficking in Women and Girls, Death Penalty Moratorium among 9 Draft Resolutions Approved by Third Committee’ (Nov. 18, 2024). Available at: <https://press.un.org/en/2024/gashc4431.doc.htm>

¹⁷ Resolution adopted by the UN General Assembly (A/RES/79/179).

The growing support for the resolution provides incontrovertible evidence of a dynamic towards the universal abolition of the death penalty.

In the African Union, 48 out of 55 countries are now abolitionist in law or in practice.¹⁸ In 2023, only two states in the African Union carried out executions: Egypt and Somalia.¹⁹

- The African continent is moving towards abolition of the death penalty at a faster rate than any other, with six countries having abolished the death penalty for all crimes or ordinary crimes in the last four years alone (since July 2021): Zimbabwe, Ghana, Chad, Zambia, the Central African Republic and Sierra Leone.
- In West Africa, Guinea joined Benin, Côte d’Ivoire, Senegal and Togo in its abolition of the death penalty in 2016. Burkina Faso abolished the death penalty for ordinary crimes in 2018. The Gambia became a State party to the Second Optional Protocol of the ICCPR in 2018 and the President commuted the death sentences of 22 people in 2019.²⁰
- In October 2021, Sierra Leone became the 22nd country on the continent to abolish the death penalty when President Maada Bio signed the Abolition of the Death Penalty Act, 2021 into law. “We should not, we shall not and we will never again execute any persons in this sovereign republic,” President Bio said, decrying capital punishment as “inhumane” and declaring that Sierra Leone had “exorcised horrors of a cruel past” through this legislation.²¹
- In other parts of the African Union, there has also been marked progress both to restrict the use of the death penalty and advance towards abolition in recent years. Kenya’s Supreme Court abolished the mandatory death penalty in 2017.²² Building on this, in 2019, the Task Force created to review capital punishment in Kenya recommended that Parliament abolish the death penalty entirely. If not abolished, the Task Force recommended it “should only be reserved for the rarest of rare cases involving intentional and aggravated acts of killing.”²³

¹⁸ The total number of 55 member states includes the Sahrawi Republic, which is not represented in this data.

¹⁹ Amnesty International 2023 Global Report

²⁰ Report of the Secretary-General on the Question of the death penalty, U.N. Doc. A/HRC/45/20, 2 (Aug. 13, 2020) (hereinafter “Report of the Secretary-General”).

²¹ Equal Justice Initiative, ‘Sierra Leone Abolishes the Death Penalty’ (Oct. 15, 2021). Available at: <https://eji.org/news/sierra-leone-abolishes-the-death-penalty/>

²² Supreme Court of Kenya, *Francis Karioko Muruatetu & another v. Republic et al.* (2017).

²³ Amnesty International ‘Death Sentences and Executions 2019’, 48; *see also* Report of the Task Force on Review of the Mandatory Death Sentence under Section 204 of the Penal Code, Vol. 1, p. 108.

- In 2020, Chad abolished the death penalty for all crimes.²⁴ In 2022, the Central African Republic abolished the death penalty for all crimes, and Equatorial Guinea and Zambia abolished the death penalty for ordinary crimes.
- In July 2023, Ghana abolished the death penalty for ordinary crimes, as Parliament voted in favour of a bill to repeal capital punishment from the criminal code.
- In Zimbabwe, a Private Members' Bill to abolish the death penalty was passed through the National Assembly and Senate in December 2024 and signed into law by President Emmerson Mnangagwa on 31st December 2024. Zimbabwe became the 30th African country to abolish the death penalty.

Many retentionist states point to the United States to support their own position, but there is also movement towards abolition there. In 2020, Virginia became the 23rd state to abolish capital punishment for all crimes, after maintaining the punishment for over 400 years.²⁵ In 2023, a total of 37 U.S. states have either abolished the death penalty or have not carried out executions in over ten years.²⁶ Following ten federal executions ordered by President Trump in 2020, the Attorney General under President Biden resumed the moratorium on federal executions.²⁷

V. Nigeria's International Obligations on the Administration of the Death Penalty, with a View Toward Abolition

International attitudes regarding capital punishment continue to evolve with the knowledge that every criminal justice system, however well-developed, is susceptible to error and miscarriages of justice. Recognizing that the death penalty is different from other punishment, and

²⁴ Report of the Secretary-General, at 2. According to the UN Human Rights Office of the High Commissioner, “[a]t the end of April 2020, the 155 members of the Chadian National Assembly adopted an amendment to law 003/PR/2020, the so-called 'anti-terrorism' law, to remove a provision that maintained capital punishment for terrorism-related offences. That revision enabled Chad to fully abolish capital punishment, after the National Assembly had promulgated a penal code in 2017 that abolished the death penalty for ordinary crimes.” See UN OHCHR ‘Civil society organizations pave the road to end capital punishment in Chad’ (9 October 2020). Available at <https://www.ohchr.org/EN/NewsEvents/Pages/chad-death-penalty.aspx>.

²⁵ Death Penalty Information Center, ‘Virginia Becomes 23rd State and the First in the South to Abolish the Death Penalty’ Mar. 24, 2021). Available at: <https://deathpenaltyinfo.org/news/virginia-becomes-23rd-state-and-the-first-in-the-south-to-abolish-the-death-penalty>. Virginia was the location of the first recorded execution in the then-European colonies, in 1608. See M. Carlisle, ‘Why It's So Significant That Virginia Looks Set to Abolish the Death Penalty’, Time (Feb. 9, 2021), Available at: <https://time.com/5937804/virginia-death-penalty-abolished/>.

²⁶ Amnesty International 2023 Global Report

²⁷ Wise, A. ‘The Justice Department Is Pausing Federal Executions After They Resumed Under Trump’, NPR (July 1, 2021). Available at: <https://www.npr.org/2021/07/01/1012366520/the-justice-department-is-pausing-federal-executions-after-they-resumed-under-tr>.

that mistakes are irreversible, international human rights law requires fair trial guarantees to be respected in *all* death penalty cases without exception. The understanding is that those facing a death sentence should be afforded special protection and guarantees to ensure a fair trial *above and beyond* what may be provided in non-capital cases. Nigeria's judicial practices must comply with its international obligations to protect the right to life under the ICCPR, acceded to in 1993, and the ACHPR, ratified in 1983 and incorporated in domestic law.

A. Obligations under the ICCPR

Article 6: The Right to Life

Article 6 of the ICCPR protects an inherent right to life and prohibits the arbitrary deprivation of life.²⁸ To interpret this provision, the UN Human Rights Committee (HRC) adopted General Comment No. 36 on Article 6 on October 30, 2018.²⁹ This interpretation draws on case law from the HRC and dedicates a section to the imposition of the death penalty. General Comment No. 36 explicitly states that the mandatory use of the death penalty constitutes an arbitrary deprivation of life, in violation of Article 6(1) of the ICCPR.³⁰ In Nigeria, the death penalty is the mandatory punishment for the offences of treachery, murder, armed robbery, *zina* (if the married), rape (if married), sodomy (if married), incest (if married), and lesbianism (if married).³¹

Article 6 goes on to list various safeguards in the application and implementation of the death penalty. First, Article 6(2) requires that it only be imposed for the *most serious crimes*. This provision has been interpreted restrictively so that capital punishment, pending abolition, may only be imposed for the most serious offences of intentional homicide. Consequently, in Nigeria, although the death penalty is not the mandatory punishment for the offences of treason and conspiracy to commit treason, banditry, kidnapping, cattle rustling, cultism and serving as an

²⁸ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, Art. 6 (hereinafter "ICCPR").

²⁹ H.R. Comm., General Comment No. 36 (2018) on Article 6 of the ICCPR, on the Right to Life, UN Doc. CCPR/C/GC/36 (Oct. 30, 2018) [hereinafter "General Comment No. 36"].

³⁰ General Comment No. 36 ("... mandatory death sentences that leave domestic courts with no discretion as to whether to designate the offence as a crime warranting the death penalty, and whether to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature. The availability of a right to seek pardon or commutation on the basis of the special circumstances of the case or the accused is not an adequate substitute for the need for judicial discretion in the application of the death penalty.").

³¹ See for example sections 49A, 319 and 402(2) of the Criminal Code Act; sections 127, 129, 131, 133, 153 of Shari'ah Penal Code Law for the Jigawa State of Nigeria and sections 124, 127, 129 and 184 of Kano State Shari'a Penal Code Law 2000.

informant to bandits,³² the imposition of the death penalty for these crimes that do not result in loss of human life is in clear violation of Article 6(2) of the ICCPR.³³ The case of Segun Olowookere – who was sentenced to death for stealing hens and eggs in Osun state and pardoned and released in December 2024 after spending 10 years on death row – exemplifies the violations of Article 6(2) being carried out in Nigeria’s criminal justice system.³⁴

Furthermore, it is impossible to discuss procedural fairness and the death penalty without addressing the issues of wrongful convictions and miscarriages of justice. In its General Comment No. 36, the HRC makes clear that the execution of persons whose guilt has not been established beyond a reasonable doubt constitutes an arbitrary deprivation of life in violation of Article 6(1) of the ICCPR. The HRC goes on to state that State parties “must therefore take all feasible measures in order to avoid wrongful convictions in death penalty cases, and to re-examine past convictions on the basis of new evidence,” and tasks State parties to “consider the implications for the evaluation of evidence presented in capital cases of new reliable studies, suggesting the prevalence of false confessions and the unreliability of eyewitness testimony.”³⁵

The authors of this Memorandum acknowledge that Article 6(1) of the ICCPR provides that the death penalty can constitute an exception to the right to life if not arbitrarily imposed. However, the HRC’s General Comment No. 36 also discusses the significance of Article 6(6) of the ICCPR, which places the death penalty in its real context and emphasizes that, moving forward, countries that retain the death penalty have an overriding obligation to do nothing further to “*delay or prevent*” the total abolition of capital punishment.³⁶ In its General Comment, the HRC said this paragraph reaffirms the position that all state parties to the ICCPR must be on;

“...an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights.”³⁷

³² See sections 37 and 38 of the Criminal Code Act and the Kidnapping and Cattle Rustling (Special Provisions) Law of 2016 in Niger State.

³³ ICCPR Art. 6(2) (“In countries which have not abolished the death penalty, sentence 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. . .”).

³⁴ Abubakar, M. ‘Nigerian man promised pardon after 10 years on death row for stealing hens’ BBC News (Dec, 18, 2024). Available at: <https://www.bbc.co.uk/news/articles/cgm92r74yd0o>

³⁵ General Comment No. 36, at para 43.

³⁶ ICCPR Art. 6.: “nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.”

³⁷ General Comment No. 36. at para 50.

The HRC further explained that Article 6(6) is the manifestation of the “pro-abolitionist spirit of the Covenant” and that given the growing number of states that have rejected the death penalty, “considerable progress may have been made towards establishing an agreement among the State parties to consider the death penalty as a cruel, inhuman and degrading form of punishment.”³⁸ The worldwide movement towards abolition of the death penalty reveals that the majority of UN member states have accepted their obligations under Article 6 to make abolition of the death penalty a reality. Nigeria has the same obligation and opportunity.

Article 7: Prohibition of cruel, inhuman or degrading treatment or punishment

Two provisions of the ICCPR are relevant to the infliction of the death penalty on those with mental illness and disability: Article 6, which prohibits the arbitrary deprivation of life, and Article 7, which bans cruel, inhuman or degrading treatment or punishment. When these provisions are read together with the UN Safeguards³⁹ and other sources including international and domestic jurisprudence, it is clear that the imposition of the death penalty and the execution of those with mental disorders is unlawful. In General Comment No. 36, the HRC asserts that “State parties must refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis to others, such as persons whose serious psycho-social and intellectual disabilities impeded their defence . . . They should also refrain from executing persons that have diminished ability to understand the reasons for their sentence.”⁴⁰ Despite the general acceptance that mental disorder should operate to protect the rights of those with mental disorder facing the death penalty, capital punishment continues to be imposed on those suffering from mental illness or mental disability in Nigeria.

Though evidence of insanity at the time of committing an offence excludes or limits criminal culpability, mental illness or intellectual disabilities that do not meet the threshold of insanity, or mental disorders arising post-conviction, do not exclude the imposition and execution of a death sentence. This is a serious human rights concern.

Furthermore, the laws of Nigeria provide for long periods of time on death row without execution, a practice which is not reflective of international standards against cruel and inhuman

³⁸ *Id.* at para 51.

³⁹ United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty, Approved by ECOSOC Resolution No. 1984/50 (May 25, 1984), *available at* <https://www.un.org/ruleoflaw/blog/document/safeguards-guaranteeing-protection-of-the-rights-of-those-facing-the-death-penalty/>.

⁴⁰ General Comment No. 36, at para 49.

punishment. Under section 12 (2)(c) of the Nigerian Correctional Service Act 2019, death sentences which have not been carried out after 10 years are converted to sentences of life imprisonment, where the individual has exhausted all legal remedies. International tribunals have generally found that a period of more than 5 years on death row, waiting for the execution of a sentence constitutes cruel and inhuman punishment.⁴¹ Ten years is a disproportionate and arbitrary length of time which puts Nigeria at odds with international standards against cruel and inhuman punishment. Notwithstanding, a recent ruling by the Economic Community of West African States (ECOWAS) Court of Justice dismissed the primary objection of the Federal Republic of Nigeria in relation to the Court's jurisdiction to determine a matter involving human rights violations of a Nigerian man who has been on death row for 30 years.⁴²

The Administration of Criminal Justice Act 2015, section 404, excludes the execution of a pregnant woman; rather, '...sentence of death shall be passed on her but it shall be suspended until the child is delivered and weaned' – a provision that leaves room for arbitrariness as to the time spent on death row. Section 405 excludes persons under the age of 18 at the time of committing the offence from imposition of a death sentence, yet young people and children continue to be sentenced to death in Nigeria due to the challenges of proving the age of the defendant.⁴³

Article 14: Right to a Fair Trial

The provisions of Article 14 of the ICCPR extensively detail the minimum requirements for a fair trial, which must be respected in all capital cases. The HRC has consistently held that if Article 14 of the ICCPR is violated during a capital trial, that violation also breaches Article 6(1)'s prohibition on arbitrary deprivation of life. Fair trial violations that may render the imposition of a death sentence arbitrary include, *inter alia*, the use of forced confessions, lack of effective representation during all stages of criminal proceedings (including pre-trial and the appeals

⁴¹ See for example the judgment of the Judicial Committee of the Privy Council in *Pratt v Attorney General of Jamaica* [1994] 2 A.C. 1

⁴² 'ECOWAS Court dismisses Nigeria's objection to death row inmate's trial' Premium Times Agency Report (Nov. 8, 2024). Available at: <https://www.premiumtimesng.com/news/top-news/752712-ecowas-court-dismisses-nigerias-objection-to-death-row-inmates-trial.html>

⁴³ In November 2024, 29 children (aged 14-17) were released after being detained for two months under possible charges carrying a death sentence, following protests in August 2024. See Shibayan, D. 'Nigeria releases 29 children who potentially faced death penalty for alleged involvement in protests' AP News (Nov. 5, 2024). Available at: <https://apnews.com/article/nigeria-children-released-death-sentence-protest-c4548b8ae282eea09fe664e2a47ac428>. For more on the detention and sentencing of children on death row, see Adeyemi, A. 'Waiting endlessly on Nigeria's death row', Al Jazeera (Dec. 4, 2013): "[As of December 2013] There are at least 40 juvenile offenders on death row. Their ages at the time of crime ranged from 13 to 17." Available at: <https://www.aljazeera.com/features/2013/12/4/waiting-endlessly-on-nigerias-death-row>

process), lack of interpretation, excessive and unjustified delays, and a general lack of fairness in the criminal process.⁴⁴ The HRC has emphasised that in capital cases, the duty to observe rigorously all the guarantees for a fair trial is even more imperative than in other cases.⁴⁵ Additionally, the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions has stated that “proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, in accordance with the pertinent international legal instruments.”⁴⁶

The major fair trial constraints in Nigeria include the over-reliance on confessional statements, and the absence of procedural safeguards against illegally obtained evidence including confessions. Despite the provisions of sections 17(2) of the Administration of Criminal Justice Act 2015 that taking of statements should be recorded on video in order to reduce incidents of coercion during interrogations, only a few law enforcement stations have the facilities for electronic recording of interrogations. A large proportion of capital convictions are based on confessions.

Other constraints include the absence of legal advice and representation on arrest and during interrogation of suspects; there are resource constraints in securing quality legal representation throughout the pre-trial stage and at trials and appeals. Most defendants depend on poorly resourced legal aid or pro bono lawyers to defend them at trials and appeals. Without mandatory appeals, some of those on death row in Nigeria have been unable to appeal their convictions and death sentences due to lack of financial or other resources.⁴⁷ This lack of adequate access to justice is a major concern and violates the provisions of Article 14 of the ICCPR.

B. Obligations under the ACHPR

The rights to life and to a fair trial under the ACHPR mirror those enshrined under the ICCPR. Article 4 of the ACHPR protects against the arbitrary deprivation of life, stating: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”⁴⁸ Article 5 of the ACHPR prohibits

⁴⁴ ICCPR Art. 14.

⁴⁵ *Thomas v Jamaica Communication*, No. 272/1988 (3 November 1993), para. 13.

⁴⁶ *Extrajudicial, Summary or Arbitrary Executions: Report of the Special Rapporteur*, UN Doc. E/CN.4/1997/60, 24 December 1996, para. 81.

⁴⁷ In 2008, Amnesty International reported that 41% of people on Nigeria’s death row had never appealed (Amnesty International, ‘Waiting for the Hangman: the Death Penalty in Nigeria’ p.3)

⁴⁸ African Charter on Human and People’s Rights art. 4, adopted June 1, 1981 (entered into force Oct. 21, 1986) [hereinafter “African Charter”].

“cruel, inhuman or degrading punishment.”⁴⁹ Article 7 guarantees the right to a fair trial by mandating certain minimum procedural protections, including the right to appeal, the presumption of innocence, the right to a defence, and the right to be tried within a reasonable time.⁵⁰

(i) Status of the African Charter in Nigeria

Like most common law jurisdictions, Nigeria’s legal system is dualist, as it relates to the implementation of international legal instruments and treaties. The Constitution of Nigeria makes provision for the National Assembly to place treaties on a domestic statutory footing.⁵¹ It is however noteworthy that Nigeria has directly implemented the African Charter into domestic law.⁵² The Nigerian Supreme Court, in *Abacha v Fawehinmi (2000) 6 NWLR Part 660*, has noted that the enabling legislation has a “international flavour” and takes precedence over domestic law (albeit not constitutional rights).

In *Abacha*, the Supreme Court held that it can be presumed that the Nigerian legislature does not intend to breach Nigeria’s treaty obligations. As such, in instances of a conflict between legislation implementing treaty obligations and domestic legislation which does not, the legislation enabling treaty rights should prevail. Functionally, this means that the jurisprudence of the African Court on Human and Peoples’ Rights should be either binding or highly persuasive authority on the domestic legal order in Nigeria.

(ii) Jurisprudence of the African Court on Human and Peoples’ Rights

In 2019, the African Court on Human and Peoples’ Rights determined that the mandatory death sentence violates the right to life and fair trial under the African Charter. In *Ally Rajabu and Others v. Tanzania*, the Court found that Tanzania’s mandatory death penalty for murder denied the convicted person the right to be heard and present mitigating circumstances, and therefore “[did] not uphold fairness and due process as guaranteed under Article 7(1) of the Charter.”⁵³ Further, the Court noted that it read Article 4 “to the effect that the failure of the mandatory imposition of the death sentence to pass the test of fairness renders that penalty conflicting with the right to life under Article 4”—finding that Tanzania’s mandatory death sentence also violated

⁴⁹ *Id.*, art. 5.

⁵⁰ *Id.*, art. 7.

⁵¹ s.12 of the Nigerian Constitution

⁵² African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria 1990

⁵³ *Ally Rajabu and Others v. United Republic of Tanzania*, Application No. 007/2015, Judgment, African Court on Human and Peoples’ Rights, para. 111 (Nov. 28, 2019)

Article 4 of the Charter.⁵⁴ The Court ordered the State to repeal its mandatory capital punishment provision.⁵⁵

Based on the preceding case law and provisions of international legal obligations, Nigeria must abolish the *mandatory* death sentence for murder, armed robbery, adultery, lesbianism, sodomy, rape, incest and blasphemy as found in its Criminal Code and in Sharia law, in order to comply with its international obligations under the ICCPR and the African Charter.

Additionally, international law goes further than restricting the use and application of the death penalty. As discussed previously, the ICCPR clearly signals that the complete abolition of the death penalty is both desirable and necessary, and Nigeria's obligations under this international treaty compel the country's legislature to take this bold step.

VI. Abolition: An Issue of Universal Human Rights

Crimes against humanity and war crimes are among the gravest, most brutal acts – offences that attempt to destroy the fabric of societies. Yet all international tribunals, including the Special Court for Sierra Leone and the International Criminal Court, that have been established to adjudicate these crimes have rejected capital punishment as a sanction.⁵⁶ This raises the question: If the death penalty is not available for the most atrocious crimes against humanity, how can it still be justified for lesser crimes?

Simply put, the premise of the anti-capital punishment movement is that the execution of *captive* citizens, whatever crimes they had committed and wherever they reside in the world, is a fundamental denial of their humanity and right to existence. As psychologist Dr. Louis West stated, “the killing of a helpless captive is a brutally degrading experience. If only those who have participated in an execution could vote on the death penalty, it would be abolished tomorrow.”⁵⁷ Thus, the human rights approach rejects the most persistent justifications for capital punishment: namely, retribution and the need to denounce and expiate through executing those

⁵⁴ *Id.* at para. 114.

⁵⁵ *Id.* at para. 171.

⁵⁶ Rome Statute of the International Criminal Court: Some Questions and Answers, UN Department of Public Information (Oct. 1998). Available at: <https://legal.un.org/icc/statute/iccq&a.htm#:~:text=Consistent%20with%20international%20human%20rights,the%20gravity%20of%20the%20case> (“Consistent with international human rights standards, the International Criminal Court has no competence to impose a death penalty. The Court can impose lengthy terms of imprisonment of up to 30 years or life when so justified by the gravity of the case.”).

⁵⁷ U.S. Senate, Hearings Before the Subcommittee on Separation of Powers of the Committee on the Judiciary, Vol. 7 Part 1, 2 (Jan. 1968).

whose crimes shock society by their brutality. It also challenges the view that the death penalty is a political necessity because it is demanded by popular majority, or that without satisfying public opinion, the government and criminal justice system would lose legitimacy. Advocates for abolition also challenge the claim that the death penalty must be retained as an essential weapon of criminal justice, without which there would be a greater incidence of serious crimes.

A. Public Opinion and the Death Penalty

A country concerned for human rights should not justify retaining the death penalty by reference to public opinion – which is often based on misconceptions about its assumed deterrent effect, the fairness and safety of its application, the absence of error, and other human rights considerations. In 2010, the Nigerian Death Penalty Group and LEDAP undertook a rigorous, comprehensive nationwide survey of public attitudes to the death penalty across all 36 states and the Federal Capital Territory.⁵⁸ Questionnaires were distributed among a target population of 30,262 people⁵⁹, participants randomly selected according to the 2006 population census, but stratified to include judicial officers, lawyers, prosecutors, police, prisoners and court staff alongside the general population. The study boasts a high response rate of 74%, with 22,393 questionnaires properly and fully completed.

The key finding – that a majority of Nigerians (51%) oppose the use of the death penalty as a punishment for crime – contradicts assumptions about public support. Indeed, only 42% of Nigeria's people supported the imposition of death sentences, and 7% were unsure. As in other countries where similar research has been undertaken, there was even less appetite among young people – only 34% of those under the age of 30 supported the continued use of the death penalty. As elsewhere, only a slim minority of respondents (16%) believed the death penalty to be applied fairly in Nigeria, and over half were not confident that those convicted of violent crime and sentenced to death were actually guilty of the offence.⁶⁰ A vast majority (72%) of respondents were of the opinion that the death penalty is, or may be, cruel, inhuman and degrading punishment.

The study also reveals a lack of public trust in the integrity and fairness of the criminal justice system with over half of respondents having no confidence in the police to protect them from violent crime and 85% believing that the police do not effectively carry out their functions.

⁵⁸ LEDAP, 'Assessment Report of Death Penalty Poll Survey in Nigeria' (2011, unpublished report).

⁵⁹ This sample is sufficient to produce reliable data that represents the views of the whole population of Nigeria (95% confidence level, 5% interval level).

⁶⁰ LEDAP, 'Assessment Report of Death Penalty Poll Survey in Nigeria' (2011, unpublished report).

While only 1% of respondents did not think that crime was a problem in Nigeria, LEDAP's study provides strong counterevidence to the claim that the Nigerian public favours the death penalty as a means of securing public safety or enacting retribution on perpetrators of serious crime.⁶¹

The only more recent data on public opinion on the death penalty in Nigeria is provided for by an online survey conducted by The Inclusion Project (TIP), published in 2022.⁶² This online survey, distributed across various social media platforms, inevitably produced much higher rates of younger respondents than LEDAP's national, randomised survey; half of those who completed the survey were between 18 and 35. While the 1,055 respondents came from a reasonably broad range of backgrounds, there is some evidence that there was a disproportionate number of middle class respondents, among whom were friends and family of the TIP survey team. While not methodologically rigorous, the findings lend support for the more robust data gathered by LEDAP, showing weak support for the death penalty with few people considering it to be an effective deterrent to crime. Fewer than a quarter of respondents felt that the death penalty is the best punishment for capital offenders, and fewer than a third thought that the death penalty could deter people from committing crimes.⁶³ The vast majority did not trust the Nigerian justice system and thought there was a high chance of innocent people being convicted. Not surprisingly, almost 80% wanted the government to abolish capital punishment.⁶⁴

The authors are not aware of any other studies of Nigerian public opinion with contradictory data. Taken together, these studies suggest that public opinion is not an insurmountable impediment to abolition.

It is clear that were the government to take the lead on this issue, the public would follow. The most critical step towards abolition of the death penalty must come from political leadership. This leadership—not organic shifts in public opinion—is crucial; the experience internationally has been that abolition is the responsibility of political leaders exercising their judgment based on an informed and rational appreciation of the case for abolition, irrespective of public demand or support for it. For example, in post-apartheid South Africa, the newly created Constitutional Court abolished the death penalty in 1995, despite recognizing that the majority of South Africans

⁶¹ *Id.*

⁶² The Inclusion Project, 'An Analysis of Peoples [sic] Perception about the use of Death Penalty as a Capital Punishment for Offenders in Nigeria' (2022). Available at <https://drive.google.com/file/d/1IQjfP2Ymt-pvjRneQj9Oq8Kx3pR69y7f/view>

⁶³ *Id.*, at 7 and 9.

⁶⁴ *Id.*, at 13.

supported the death penalty for extreme cases of murder.⁶⁵ The Court declared the death penalty incompatible with both the prohibition against cruel, inhuman, or degrading punishment, and with “a human rights culture” which would “protect the rights of minorities and others who cannot protect their rights adequately through the democratic process.”⁶⁶

In Sierra Leone, principled leadership once again led to abolition in 2021: lawmakers voted unanimously to abolish the death penalty by removing it from the country’s criminal statutes. The public followed; there have been no calls for its reinstatement since. President Maada Bio has acknowledged abolition as a progressive part of his legacy in Sierra Leone, particularly because this landmark step came during the country’s recovery from the 1991-2002 civil war characterized by atrocities and extreme violence.

Countries have not abolished the death penalty because of popular demand reflected in opinion polls. However, the experience of virtually all abolitionist countries is that the public has followed political leadership, and, in time, endorses abolition or, at the least, does not express strong opposition. In the case of Nigeria, as in many countries in Africa, the death penalty is, at its core, inconsistent with the country’s cultural and religious values. In recent months, experts from the legal profession, civil society and the National Human Rights Commission in Nigeria have regularly voiced the need to abolish the death penalty.⁶⁷ If Nigerian political leadership determined that abolition was necessary, the public would not resist that position.

B. Deterrence and the death penalty

Turning to deterrence, the death penalty—as practiced in democratic states through the occasional execution, or by leaving it unenforced on the statute book, as in Nigeria over the past years—has not been shown convincingly to provide more protection for citizens than the alternative punishment of lengthy imprisonment.⁶⁸ The real question is whether a system of capital

⁶⁵ *State v Makwanyane* [1995] (3) S.A. 391, *quoted* in William A. Schabas, ‘Public Opinion and the Death Penalty’, Paper presented to the *EU–China Seminar on Human Rights*, Beijing, 10–12 May 2001, *reprinted* in P. Hodgkinson and W.A. Schabas (eds.), ‘Capital Punishment: Strategies for Abolition’ 309-331 (2004).

⁶⁶ *State v Makwanyane* (1995) (3) SA 391, para. 88.

⁶⁷ See, for example, Majeed B. ‘Capital Punishment Conundrum: In Nigeria, death penalty no longer serves its purpose’ *Premium Times* (Oct. 10, 2024). Available at: <https://www.premiumtimesng.com/news/743564-capital-punishment-conundrum-in-nigeria-death-penalty-no-longer-serves-its-purpose.html>; and Nnochiri, I. ‘Death Penalty: 3,650 inmates awaiting execution in various prisons – ASF’, *Vanguard* (Oct. 10, 2024). Available at: <https://www.vanguardngr.com/2024/10/death-penalty-3650-inmates-awaiting-execution-in-various-prisons-asf/>

⁶⁸ Rome Statute of the International Criminal Court, *supra* n.71 (“Deterrence is not just effected by the death penalty. Deterrence is brought about by the entire criminal justice process from investigation, followed by prosecution, trial, delivery of the judgment, sentencing and punishment.”).

punishment enforced through executions leads to a lower incidence of murder and other capital crimes than does a penalty system which does not threaten criminals with death.

There is no convincing evidence to establish that the threat of execution is a uniquely effective deterrent. While most empirical studies have been carried out in the United States, the limited evidence from beyond the US also supports these findings. Analysis of hundreds of deterrence studies in the US and Europe demonstrates that while deterrent effects can be found in relation to minor crimes, there were no such effects on murder for any punishment, including execution.⁶⁹ A review of five decades of evidence on deterrence for the American National Research Council concluded that belief in deterrence is unreliable and, in many studies, wrong.⁷⁰ Furthermore, homicide rates have been declining since the early 1990s across all American states, both retentionist and abolitionist. States that abolished in the last two decades did not see increasing murder rates and nor did those that kept the death penalty. Moreover, over the last 20 years, homicide rates in states with the death penalty have been higher than in states without it.⁷¹

Some research has sought to establish whether a moratorium on executions or abolition appear to produce a rise in the rate of murder, or whether the introduction of the death penalty reduces the rate of murder. Of course, murder rates are affected by many factors beyond the criminal justice process. If the death penalty has a deterrent effect, we would not expect a fall in murder rates following abolition. And yet the murder rate *decreased* in multiple countries after abolition, including Australia, Canada and across eastern Europe.⁷² While South Africa maintains a high murder rate, it is *still* lower than it was prior to abolition.⁷³ A study comparing murder rates in Singapore, which uses the death penalty for murder, with Hong Kong, which has abolished the death penalty, shows no difference in murder rates since executions ended in Hong Kong 30 years ago.⁷⁴ Legal experts from Sierra Leone and Ghana – two of the most recent states to abolish the

⁶⁹ Dolling, D. et al., 'Is Deterrence Effective? Results of a Meta-Analysis of Punishment', *European Journal of Criminal Policy and Research*, 15, 201–224 (2009).

⁷⁰ National Research Council, 'Deterrence and the Death Penalty', D. Nagin and J.V. Pepper (eds) (2012).

⁷¹ Death Penalty Information Center, 'Murder Rate of Death Penalty States Compared to Non-Death Penalty States', (accessed on Nov. 8, 2024). Available at: <https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>.

⁷² UN Geneva, 'Morning - Human Rights Council Holds Biennial High-Level Panel Discussion on the Question of the Death Penalty' News Report (Feb. 23, 2021). Available at: <https://www.ungeneva.org/en/news-media/meeting-summary/2021/02/il-ressort-du-debat-biennal-du-conseil-des-droits-de-lhomme-sur> (remarks of Carolyn Hoyle).

⁷³ *Id.*

⁷⁴ Zimring, F.E., Fagan, J. and Johnson, D.T. 'Executions, Deterrence, and Homicide: A Tale of Two Cities', CELS 2009 4th Annual Conference on Empirical Legal Studies Paper; Columbia Public Law Research Paper No. 09-206 (2009).

death penalty in Africa – have not observed any rise in crime rates following abolition in 2021 and 2023 respectively.⁷⁵

The consensus among social scientists and legal scholars is that the death penalty therefore serves no valid penological purpose and is ineffective as a measure to prevent crime. In all jurisdictions, it would seem, murder rates rise and fall independently of the imposition of death sentences or the conduct of executions. Further, even if it were shown that retention of the death penalty could have a marginally greater deterrent effect than lengthy imprisonment, it could only be achieved by high rates of execution, speedily enforced across most categories of serious crime.⁷⁶ This would increase the probability of innocent or wrongfully convicted persons being executed and increase arbitrariness, in violation of Nigeria’s obligations under the ICCPR.

C. Religious and Cultural Objections

Religious objections to the death penalty are often rooted in the sanctity of life and the concept of mercy. For instance, Muslim scholars have found that “the death penalty is against the very essence of Islam, that is. . . to bring mercy and blessing to all creatures in the universe.”⁷⁷ Many Christian denominations oppose the death penalty on similar grounds. The Roman Catholic Church condemns capital punishment as an attack on the dignity and inviolability of a person and in 2018, the Vatican formally revised the official Catechism of the Catholic Church to unambiguously oppose the death penalty. The Catholic community in Nigeria has echoed that position, stating that “[t]he Catholic Church does not support death penalty as punitive to crime. It’s only God that has the power to terminate human lives.”⁷⁸ The United Methodist Church has also internationally opposed the death penalty, espousing the belief that “the death penalty denies the power of Christ to redeem, restore and transform all human beings.”⁷⁹

⁷⁵ Independent NG, ‘Experts Advocate Abolition Of Death Penalty In Nigeria’ (Oct. 28, 2024). Available at: <https://independent.ng/experts-advocate-abolition-of-death-penalty-in-nigeria/>

⁷⁶ Professors Roger Hood and Carolyn Hoyle reached this conclusion after a thorough review of the evidence on deterrence, reported in the authoritative 4th edition of *The Death Penalty: A World-wide Perspective*. See: Hood, R. and Hoyle, C. *The Death Penalty: A Worldwide Perspective*. (5th ed., 2015), 347-349.

⁷⁷ Hoyle, C. ‘Investigating Attitudes to the Death Penalty in Indonesia, Part Two - Public Opinion: No Barrier to Abolition’, *The Death Penalty Project* (2021), p6. Professor Siti Musdah Mulia, who expressed this view in her Foreword to this report, is an Indonesian women's right activist and professor of religion.

⁷⁸ The Justice Development and Peace Makers Centre (JDPMC) of the Catholic Diocese of Osogbo aligns with this view. See Omofoye, T. and Agbor, T. ‘Catholic church opposes death penalty for kidnappers in Osun’ (26 Feb. 2020), available at <https://guardian.ng/news/catholic-church-opposes-death-penalty-for-kidnappers-in-osun/>.

⁷⁹ Death Penalty Information Center, ‘United Methodist Church Marks 50th Anniversary of Stance Against Death Penalty’ (Apr. 25, 2006), available at <https://deathpenaltyinfo.org/news/united-methodist-church-marks-50th-anniversary-of-stance-against-death-penalty>.

The question of religious objections is a pertinent one for Nigeria. The twelve Northern States in which Sharia law is enacted are often seen as a barrier to abolition, as they are expanding the application of the death penalty at the fastest rates.

First, it bears emphasis that even Sharia law only applies the death penalty in the most serious types of crimes, such as homicide. In practice, due to political factors, many countries have extended the use of the death penalty to crimes that were not initially punishable by death in the Quran.⁸⁰ Some scholars have explored the compatibility of Sharia law and the death penalty and found them to be inconsistent, particularly with respect to the expansion of Sharia penal codes in response to political pressure.⁸¹

Second, while there is a provision allowing for capital punishment in limited circumstances, Sharia law provides and even encourages non-punitive forms of justice such as restitution and forgiveness: “The recompense for an injury is an injury equal thereto [in degree]; but if a person forgives and makes reconciliation, his reward is due from God; for [God] loves not those who do wrong. (Quran 42:40)”.⁸²

Most importantly, Sharia law in Nigeria must still comply with the Constitution, as the supreme law of Nigeria (s.1 of the Constitution). As Sharia courts and a Sharia legal system are expressly provided for within the Constitution, it follows that the judicial and legal system under Sharia law must also comply with the fundamental rights and freedoms that are Constitutionally guaranteed. Indeed, there have already been instances where Sharia laws were modified in Nigeria to reflect national and international laws, including to reconcile religious practices with federal policies, in relation to women, children and girls’ issues. Sharia law provides no immunity from constitutional challenge to the use of the death penalty or the challenge to methods of execution.

Additionally, abolition has already been achieved in countries with significant Muslim populations. Of the 57 member states of the Organisation of Islamic Cooperation (OIC),⁸³ 20 have

⁸⁰ Asif, N. ‘An introduction to sharia law and the death penalty’, Death Penalty Research Unit Blog (Jan. 26, 2021). Available at: <https://blogs.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/blog/2021/01/introduction-sharia-law-and>.

⁸¹ Peiffer, E. ‘The Death Penalty in Traditional Islamic Law and as Interpreted in Saudi Arabia and Nigeria’, William & Mary Journal of Women the Law 11 (9) (2005). Available at: <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1132&context=wmjowl>

⁸² Asif, N. ‘An introduction to sharia law and the death penalty’, Death Penalty Research Unit Blog (Jan. 26, 2021).

⁸³ “The Organisation of Islamic Cooperation (OIC) is the second largest organization after the United Nations with a membership of 57 states spread over four continents. The Organization is the collective voice of the Muslim world. It endeavours to safeguard and protect the interests of the Muslim world in the spirit of promoting international

abolished capital punishment for all crimes or ordinary crimes; 12 have established a moratorium on its use; and 25 retain the punishment.⁸⁴ In other words, the majority of the Islamic world has abolished the death penalty in law or in practice.⁸⁵ For instance, Djibouti, a Muslim-majority Arab State, abolished the death penalty in 1995 for all crimes. According to Omar Ali Ewado, President of the Djiboutian Human Rights League: “Djiboutian society is a semi-nomad and Islamic society so it was hard to make citizens understand the human reason for abolishing the death penalty. However, our awareness campaigns produced results.”⁸⁶ Cote d'Ivoire, a country with two main religious communities – a Muslim majority and a Christian and animist community – abolished the death penalty in 2000.⁸⁷ And in Senegal, where Muslims account for over 90% of the population, capital punishment was abolished in 2004 by parliamentary and presidential action.⁸⁸ Such advances demonstrate that abolition is equally feasible in Nigeria, notwithstanding its religious composition.

D. Retribution and the death penalty

Some of those in Nigeria arguing for retention of capital punishment rely on retribution as a rationale. The claim that justice requires execution as retribution for heinous crimes, however, does not bear scrutiny.

The attempt to justify the death penalty to satisfy the desire for retribution, neatly captured by the phrase ‘an eye for an eye,’ has long been rejected as a permissible basis for the imposition of capital punishment. To permit the taking of a life on this basis alone is inherently degrading to the society which authorizes it and is fundamentally inconsistent with the principle of human dignity upon which democratic societies are based.

If the retributive aim of punishment to “fit the crime” is taken literally (a life for a life), then the principle of retribution is unacceptable and non-transferable: it would require us to rape

peace and harmony among various people of the world.” See Organisation of Islamic Cooperation, available at https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en.

⁸⁴ Georges, N. ‘The Process of Abolishing the Death Penalty in Member States of the Organisation of Islamic Cooperation’, Ensemble Contre La Peine de Mort (ECPM) (2020). Available at: <https://www.ecpm.org/app/uploads/2022/10/rapport-OCI-2020-GB-191120-web.pdf>. These numbers are dated as of 2022.

⁸⁵ ECPM, ‘Overview 2022: The Process of Abolishing The Death Penalty In Member States Of The Organisation Of Islamic Cooperation’, Available at: <https://www.ecpm.org/app/uploads/2023/07/OCI-8pages-GB-050723-bd.pdf>.

⁸⁶ Georges, at 59.

⁸⁷ *Id.* at 64-65.

⁸⁸ Death Penalty Information Center, ‘Countries That Have Abolished the Death Penalty Since 1976’. Available at <https://deathpenaltyinfo.org/policy-issues/international/countries-that-have-abolished-the-death-penalty-since-1976>.

rapists, betray traitors, or torture torturers – punishments that are not inflicted in any criminal legal system. Since a system cannot punish all crimes under this principle, it is arbitrary for the principle to apply to the punishment for murder.

Thus, the South African and Lithuanian Constitutional Courts roundly rejected the principle of punitive equivalence when considering how a modern democratic society should act towards its citizens.⁸⁹ The Lithuanian court further elaborated that the “*psychological basis*” of the retributive stance is “*understandable*,” but when that:

“[L]ogic is applied to other categories of crimes, it becomes clear that the principle that “a criminal action must be punished by the same action” is unacceptable. The criminal who has maimed his victim may not be maimed in a similar manner. This is unacceptable to modern civilisation.”⁹⁰

Secondly, if retribution means that the punishment must be proportionate to the gravity of the crime and the culpability of the offender, what is referred to as a ‘just desserts’ model of sentencing, then that principle can be upheld *without* capital punishment. Simply put, murder – as the gravest crime – would deserve the maximum punishment provided in a criminal legal system. What is deemed the maximum punishment becomes society’s normative expectation of what an offender deserves. Therefore, by implementing a system where the harshest punishment is life imprisonment, the conditions are created whereby the public, and victims’ families, would consider that punishment to be proportionate to the gravest crime committed.⁹¹

Rejection of retributive equivalence is also demonstrated in the development of international sentencing principles that require focus not only on the severity of the particular offence, but also on the circumstances of the offender and prospects of rehabilitation.⁹² Coercive acts justified solely by a desire for societal ‘vengeance’ cannot be reasonably brought within the

⁸⁹ Case No. 2/98 (Lithuania 1998); Makwanyane at par. 129.

⁹⁰ Case No. 2/98 (Lithuania 1998).

⁹¹ Von Hirsch, A. and Ashworth, A. (2005) ‘Criteria for Proportionality: A Review’, in *Proportionate Sentencing: Exploring the Principles*, Oxford University Press. Other countries have terms of imprisonment proportionately severe in application to a crime of murder. For example, in Taiwan, “the [political] majority favoured alternative punitive penalties that were, in their opinion, *sufficiently severe* to mark the gravity of the crime rather than *demanding* ‘a life for a life,’ while at the same time giving the public protection from the most dangerous offenders.” See Roger Hood, *Is Public Opinion a Justifiable Reason Not to Abolish the Death Penalty? A Comparative Analysis of Surveys of Eight Countries*, 23 *Berkeley Journal of Criminal Law*, 406 (Fall 2018).

⁹² See, e.g., *Santosh Bariyar v State of Maharashtra* [2009] INSC 1056.

scope of legitimate protection of the rights and freedoms of others—particularly when viewed in the context of the framework of the Constitution as an instrument based on the rule of law.

E. Accepting Nuances in Accountability for Victims and Families

Nigerians have also supported capital punishment under the presumption that it may deliver justice to victims’ families, particularly when it is handed down as a sentence for murder. But the assumption that victims or their families seek the death penalty has no basis in evidence or research, nor does the assumption that executions of perpetrators bring families the psychological relief of ‘closure’.⁹³

Families of victims do not universally seek the same level of punishment for those found guilty. Each family’s notion of justice will differ and desire for retribution is by no means universal.⁹⁴ On the contrary, many families have said that a death sentence only extends suffering to the family of a perpetrator. Others will want only the guarantee that the perpetrator cannot commit a similarly heinous crime again, a guarantee that life in prison can secure.⁹⁵ Victims want a role in the process, to be able to express to the court their trauma and to be kept informed in a timely fashion about the criminal process and outcomes. They typically do not want to influence the process or outcome.⁹⁶

There is no doubt that families of homicide victims experience extreme grief and trauma and many feel powerless and frustrated by criminal justice systems that do not attend to their needs. However, research the world over has shown that their recovery is helped by restitution, compensation, counselling and a meaningful role in the criminal process. No research to date has established that cruel and inhuman punishments help their recovery. Furthermore, a system of capital punishment can never bring closure to a victim’s family if a death sentence is imposed but never executed.⁹⁷ In Nigeria, a death sentence has not ended in an execution in nearly a decade.

⁹³ Armour, M. and Umbreit, M. ‘The Ultimate Penal Sanction and “Closure” for Survivors of Homicide Victims’, *Marquette Law Review*, 2007, 91(1), 381-424; Bandes, S. ‘Victims, “Closure”, and the Sociology of Emotions’, *Law and Contemporary Problems*, 2009, 72(2), 1-26.

⁹⁴ Mezey, G., Evans, C, and Hobdell, K. ‘Families of homicide victims: psychiatric responses and help-seeking, *Psychology and Psychotherapy: Therapy Research and Practice*, 2002, 75(1), 65-75. et al.

⁹⁵ Vandiver, M. ‘The impact of the death penalty on families of homicide victims and of condemned prisoners’, in Acker, Bohm, and Lanier (eds.) *America’s Experiment with Capital Punishment*, North Carolina Academic Press, 2006.

⁹⁶ Hood, R. and Hoyle, C. *The Death Penalty: A Worldwide Perspective*. (5th ed., 2015), ch. 7.

⁹⁷ Madeira, J. ‘Escaping the Closure Trap’, in I. Simonovic, ed., *Death Penalty and the Victims*, New York, FDFA, 2016, 66-74.

Families, therefore, are left in limbo with justice indefinitely deferred. Such victims could begin the process of healing with a sentence of life in prison.

F. Conditions on Death Row

The often-cruel conditions of confinement on death row may go under-reported due to the difficulty of contacting those sentenced to death and the lack of representation for many. Yet in the instances where conditions *are* documented, the stories are bleak. In two case studies conducted in the state of Texas, individuals who were sentenced to death were held in solitary confinement for approximately 23 hours per day. Similar conditions have been documented in Nigeria, where “those on death row are held in tiny, dark, and filthy cells, with almost no ventilation”.⁹⁸ The same report describes that “many of the prisons do not have modern drainage systems, instead, they use open drains that create a serious health risk for inmates and staff alike. Most cells have only small windows for ventilation. Death row inmates face even worse conditions.”⁹⁹

Prison conditions generally can cause or contribute to poor physical and mental health – a fact confirmed by a study of women in prison in Sierra Leone.¹⁰⁰ A recent UNODC study suggests that people in prison in Nigeria are twice as likely to be living with HIV than people in the community.¹⁰¹ In any country, including the US, inadequate conditions of detention can exacerbate existing mental illness or cause people to cause to develop a new mental illness.¹⁰² Following the publication of a large body of research demonstrating the harmful impact of solitary confinement, particularly when used punitively for periods longer than four weeks and for people with prior mental health problems,¹⁰³ the US has seen a recent trend away from permanent solitary confinement, with many retentionist states declaring it to be contrary to evolving standards of

⁹⁸ Ugwu, D. ‘To Kill or Not to Kill: Unending debate about death penalty in Nigeria’, Sahara Reporters (Oct. 10, 2022), <https://saharareporters.com/2022/10/10/kill-or-not-kill-unending-debate-about-death-penalty-nigeria-damianugwu>

⁹⁹ *Id.*

¹⁰⁰ Cyrus Vance Centre for International Justice and AdvocAid Sierra Leone, ‘Women Wahala Na Prison: Causes and Consequences of Women’s Imprisonment in Sierra Leone’ (August 2020), 9. Available at <https://advocaidsl.org/wp-content/uploads/2020/08/Final-Woman-wahala-na-prison-web-version-.pdf>.

¹⁰¹ UNODC (2024) ‘National Situation and Needs Assessment of HIV and AIDS, Drug Use and Related Health Services in Nigerian Prisons’, available at <https://www.unodc.org/conig/en/stories/hiv-prevalence-in-nigerian-prisons-twice-national-average--says-unodc-study.html>

¹⁰² Human Rights Clinic, University of Texas School of Law, ‘Designed to Break You: Human Rights Violations on Texas’ Death Row’ (April 2017), 5, Available at: <https://law.utexas.edu/wp-content/uploads/sites/11/2017/04/2017-HRC-DesignedToBreakYou-Report.pdf>.

¹⁰³ Shaley, S. (2008) A Sourcebook on Solitary Confinement, London: Mannheim Centre for Criminology at <https://www.solitaryconfinement.org/sourcebook-on-solitary-confinement>

decency.¹⁰⁴ Indefinite and prolonged solitary confinement, defined as a time period in excess of 15 consecutive days, are prohibited by the UN Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations General Assembly in 2015 (also known as the ‘Nelson Mandela Rules’).¹⁰⁵

Outside of solitary confinement, other cruel conditions persist for those on death row. They often have fewer opportunities to access medical care, psychological care, support by way of religious texts and resources,¹⁰⁶ and even adequate nourishment or sanitation.¹⁰⁷ These individuals are not treated with basic human dignity and face additional psychological suffering by virtue of facing death each day, especially in those countries where there is little or no warning of when executions will take place, such as Japan.¹⁰⁸

Nigeria has already pledged to improve the terrible conditions of confinement to bring all custodial facilities in line with the standards set out by the Nigerian Correctional Services Act, 2019. Notably, the existence of capital punishment does not resolve the significant issue of overcrowding in prisons; overcrowding is instead rooted in issues such as high numbers of arrests for petty offenses and the use of pre-trial detention. By recognising the necessity for reforms in conditions of incarceration and in sentencing practices, the Nigerian government has shown both that it recognises and is concerned about the risks of poor conditions.

VII. Alternatives to the Death Penalty

In legislating to replace the death penalty, it should be noted that mandatory minimum terms of imprisonment (e.g., life imprisonment) can breach an individual’s right to a fair trial and risk similar disproportionality. The best course is to replace a death sentence with maximum, non-mandatory, penalties of life imprisonment. Almost all the member states of the Council of Europe as well as Australia and New Zealand replaced the death penalty with a life sentence, either indeterminate or determinate, but always with the possibility of release on parole after serving a

¹⁰⁴ Vines, B. ‘Decency Comes Full Circle: The Constitutional Demand to End Permanent Solitary Confinement on Death Row’, (2022) 56 *Columbia Journal of Law & Social Problems* 591.

¹⁰⁵ UN Resolution 70/175, adopted on Dec. 17, 2015. Available at: <https://documents.un.org/doc/undoc/gen/n15/443/41/pdf/n1544341.pdf>

¹⁰⁶ Human Rights Clinic, University of Texas School of Law, ‘Designed to Break You: Human Rights Violations on Texas’ Death Row’ (April 2017), 6.

¹⁰⁷ Cyrus Vance Centre and AdvocAid (2020), at 9.

¹⁰⁸ Johnson, D. T., ‘Where the state kills in secret. Capital punishment in Japan’, *Punishment and Society* 8 (2006), pp. 251–285.

number of years in prison. In Sierra Leone, where the process for replacing capital punishment as a sentence is still ongoing, the sentence for murder will be a mix of determinate or life sentences, depending on the severity of the offense. The exercise of discretion by sentencing judges will ensure that sentences will be individualised so as to be proportionate to the gravity of the individual crime, its circumstances, and the characteristics and culpability of the person being sentenced.

When the death penalty is replaced with a flexible discretionary system, sentencing guidelines may be issued to clarify the range of penalties appropriate for specific offences. Sentencing should allow for rehabilitation and reintegration, and conditions of detention should be designed to promote this. Legislation replacing the death penalty should also provide for a judicial re-sentencing process for those sentenced to death. Those with pending appeals can be re-sentenced to one of the new penalties replacing the death penalty, and a judicial re-sentencing process should be established for those who have exhausted their criminal appeals. This will considerably reduce the need for commutations or other special procedures.

The experience of the authors of this report supports the recommendation that where life imprisonment is the alternative punishment to death, it must include a review process that allows for early release where conditions are favourable to such release. Such review must be conducted by a fully functioning independent parole system. The central consideration is that a replacement punishment is individualised so as to be proportionate to the gravity of the crime, the circumstances in which it was committed, the characteristics and culpability of the person sentenced to death, and consideration of the impact of the crime on those directly affected by it and on the general community. It should not only reflect an element of retribution, potential deterrence, and rehabilitation, but also be regarded as just, fair, proportionate, and humanely delivered. Crucially, the punishment must reflect mitigating factors as well as any aggravating features of the offence.

VIII. Conclusion

Death penalty jurisprudence has historically advanced two justifications for the death penalty: “retribution, and deterrence.”¹⁰⁹ There is no sound evidentiary basis demonstrating any efficacy of capital punishment as a deterrent. The retributive justification for capital punishment has long been rejected as a permissible basis for the imposition of the punishment, given the

¹⁰⁹ See, e.g., *Gregg v. Georgia*, 428 U. S. 153, 183 (1976).

inconsistency of a modern democratic society and a punitive system based on vengeance. Absent either justification, capital punishment is necessarily arbitrary.

Arbitrariness is endemic in all capital punishment systems and will always be. Race, gender, religion, and class are clearly correlated with legal decision making in all retentionist countries. Research has also found that mental health and disability often intersect with poverty and class to create acute vulnerabilities in the criminal process, which limit defendants' abilities to defend themselves and to present mitigating evidence at trial or on appeal.

The evidence reviewed for this Memorandum indicates that arbitrariness is inherent in all criminal justice systems that retain the death penalty. Indeed, it is highly unlikely that any system could guarantee the absence of arbitrariness. As many countries have already discovered, it is impossible to design a system of capital punishment that does not violate human rights, which in turn has been their justification for abolition. In sum, there is no question of fixing the death penalty: the solution is to abolish it. Eight years after the last execution was carried out in 2016, Nigeria should not still impose punishments that are inflicted arbitrarily and inhumanely. It is time for Nigeria to accept that the death penalty inevitably violates the right to life and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment, and that the country should therefore pursue its commitment to abolition as swiftly as possible.

The authors of this Memorandum urge the Federal Republic of Nigeria to follow recent examples on the continent and end the death penalty as punishment for crimes in Nigeria. This will be a legacy that fulfils the aspiration of the people and ensures that Nigeria meets its international human rights obligations. An Executive Bill can replace capital punishment with a humane and flexible system of imprisonment by amending the Constitution so as to protect the right to life without exception and by declaring capital punishment to be in violation of the Constitution.¹¹⁰

¹¹⁰ Over half of the countries that have abolished capital punishment since 1988 have ensured through their own constitutions— e.g. in Namibia, Mozambique, and Belgium—or through interpretation of the constitution by the courts—e.g. in South Africa and the Ukraine—that the death penalty cannot be reintroduced. See Hood, R. and Hoyle, C. 'Abolishing the Death Penalty Worldwide: The Impact of a "New Dynamic"', 38 *Crime and Justice* 1, 11 (2009).