Constitutional and Human Rights Dimensions of Capital Punishment in Nigeria

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Abstract

The retention of the death penalty in Nigeria presents a persistent tension between constitutional authorisation and evolving international human rights standards on the right to life. While section 33(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) permits the deprivation of life pursuant to a judicial sentence, this article argues that the provision has been widely misinterpreted as an endorsement rather than a narrowly framed exception. The study adopts a doctrinal and comparative research methodology. Doctrinally, it interrogates the constitutional, statutory, and institutional foundations of capital punishment in Nigeria. Comparatively, it evaluates Nigeria's legal position against international human rights instruments, particularly the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights and highlights the growing normative shift toward abolition. The article demonstrates that Nigeria's current position reflects a disjunction between formal legality and substantive legitimacy. It contends that the constitutional basis of the death penalty is doctrinally fragile and increasingly incompatible with contemporary human rights standards,. Drawing on comparative jurisprudence, the article identifies viable pathways for reconciling domestic law with international obligations through judicial reinterpretation, legislative reform, and institutional change. It concludes that the continued retention of the death penalty in Nigeria is not only normatively indefensible but also legally unsustainable within an evolving human rights framework, and that the space for maintaining the status quo is rapidly diminishing.

Keywords: Death Penalty, Right to Life, Constitutional Law, International Human Rights Law, Capital Punishment, Judicial Interpretation, African Human Rights System

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1. Introduction

1.1 Background and Context

The retention of the death penalty in Nigeria represents one of the most persistent and contentious issues within contemporary human rights discourse. While capital punishment remains legally sanctioned under Nigeria's constitutional and statutory framework, its continued application increasingly appears out of step with the global movement toward abolition and the progressive expansion of the right to life. Across jurisdictions, the death penalty has undergone a profound transformation—from a widely accepted instrument of criminal justice to a practice subjected to stringent moral, legal, and empirical scrutiny. This transformation is reflected in the growing number of states that have abolished capital punishment either in law or in practice, as well as in sustained advocacy efforts by international human rights institutions and civil society actors such as Amnesty International[1]which document a steady global decline in executions and reinforce the normative case against the practice.

Despite this global trajectory, Nigeria remains a retentionist state. Capital punishment continues to be prescribed for offences such as murder, armed robbery, and treason under various statutory regimes. Its persistence is not merely a matter of legislative policy but is anchored in constitutional text, thereby elevating the issue beyond ordinary legal reform to one of constitutional significance. This dual character creates a fertile ground for critical inquiry into the legitimacy and sustainability of the death penalty within the Nigerian legal order.

1.2 The Central Legal Problem

At the core of this discourse lies a fundamental tension between constitutional legitimacy and evolving international human rights standards. Section 33(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)[2] guarantees the right to life but simultaneously permits its deprivation "in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria." This formulation raises a crucial interpretive

[1] Amnesty International, *Death Sentences and Executions 2023* (Amnesty International, 2024).

[2] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33(1).

question: does the Constitution affirmatively endorse the death penalty as a legitimate form of punishment, or does it merely tolerate it as a narrowly defined exception to a fundamental right? This ambiguity is not trivial. The manner in which section 33 is interpreted directly influences the extent to which capital punishment may be subjected to constitutional scrutiny. A rigid, literal interpretation suggests that the death penalty is constitutionally insulated from challenge. Conversely, a purposive and rights-oriented interpretation situates the exception within a broader framework of limitation, thereby opening it to restriction in light of evolving legal and moral standards.

The complexity of this issue is further compounded by Nigeria's international obligations. As a State Party to key human rights instruments such as the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) and the African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986), Nigeria is bound at the international level to respect and protect the right to life. Although these instruments stop short of imposing an absolute prohibition on the death penalty, they significantly circumscribe its application and establish a normative trajectory toward abolition.[3] The coexistence of constitutional authorisation and international restriction creates a fragmented legal landscape that demands reconciliation.

1.3 Research Questions and Objectives

This article is structured around a set of interrelated questions designed to interrogate both the doctrinal and normative dimensions of the death penalty in Nigeria. First, to what extent does the Nigerian Constitution provide a legitimate legal foundation for capital punishment? Second, how do international and regional human rights standards reshape or challenge this constitutional position? Third, can Nigeria reconcile its retention of the death penalty with its international obligations without necessitating fundamental constitutional revision? The primary objective of this study is to critically evaluate the compatibility of Nigeria's death penalty regime with contemporary human rights standards. In doing so, it seeks to move beyond descriptive exposition toward a more analytical and normative engagement with the

[3]UN Human Rights Committee, *General Comment No 36 on Article 6 (Right to Life)* (30 October 2018) UN Doc CCPR/C/GC/36.

underlying assumptions that sustain capital punishment within the Nigerian legal system. The article further aims to contribute to broader scholarly debates on the relationship between domestic constitutional law and international human rights norms, particularly within dualist legal systems.

1.4 Statement and Argumentative Position

This article advances the central argument that the perceived constitutional legitimacy of the death penalty in Nigeria is both doctrinally overstated and normatively unsustainable. Contrary to dominant interpretations, section 33(1) of the 1999 Constitution does not confer an unqualified endorsement of capital punishment; rather, it establishes a narrowly circumscribed exception to the right to life, the scope of which must be subjected to strict and evolving scrutiny. The prevailing tendency within Nigerian legal discourse has been to treat this constitutional exception as definitive validation of the death penalty. This article challenges that orthodoxy by arguing that such an approach reflects an unduly formalistic reading of constitutional text, one that fails to engage with the purposive dimension of rights interpretation and the increasing influence of international human rights norms. Properly understood, the constitutional provision does not immunise capital punishment from challenge but instead places it within a framework that demands continuous justification.

Furthermore, the article contends that even where the death penalty is constitutionally permissible, it is increasingly incompatible with contemporary interpretations of the right to life under international law. Instruments such as the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, as interpreted by international and regional bodies, reflect a clear normative movement toward restriction and eventual abolition.[4] Nigeria's continued retention of capital punishment therefore places it in a position of growing dissonance within the international human rights regime. The issue, therefore, is no longer whether the death penalty is formally lawful, but whether it remains legally defensible within an evolving human rights framework. This article argues that its

[4] William A Schabas, *The Abolition of the Death Penalty in International Law* (3rdedn, Cambridge University Press, 2002); Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press, 2015).

continued application reveals a deeper structural tension between constitutional text, judicial interpretation, and international obligation. One that necessitates active legal re-evaluation through judicial reinterpretation, legislative reform, and, where necessary, constitutional reconsideration.

1.5 Significance and Scope of the Study

The significance of this study lies in its integrative approach to the analysis of capital punishment in Nigeria. Rather than treating constitutional law and international human rights law as discrete domains, the article examines the dynamic interaction between them, highlighting areas of convergence, conflict, and potential harmonisation. In doing so, it addresses a critical gap in existing literature, which has often failed to fully engage with the implications of international norms for domestic constitutional interpretation. The scope of the study is primarily doctrinal and analytical, focusing on constitutional provisions, statutory frameworks, and relevant international instruments. It also incorporates comparative insights from other jurisdictions to illuminate alternative approaches to the regulation or abolition of the death penalty. While the analysis is grounded in the Nigerian legal context, its implications extend to broader debates on human rights compliance and constitutional evolution in similarly situated legal systems.

1.6 Methodology

This research adopts a doctrinal legal methodology, involving the systematic examination of primary legal sources, including constitutional provisions, statutes, and judicial decisions. These are supplemented by international legal instruments and the interpretive outputs of relevant human rights bodies. Secondary sources, such as academic literature and reports by international organisations, are also utilised to provide contextual and analytical depth. In addition, the study employs a comparative approach, drawing on developments in other jurisdictions to situate Nigeria's position within the broader global context. This methodological pluralism enables a more comprehensive understanding of the legal and normative issues surrounding the death penalty and facilitates the identification of viable pathways for reform.

1.7 Structure of the Article

Following this introduction, the article proceeds to examine the conceptual and theoretical foundations of the right to life and capital punishment. It then analyses the constitutional and statutory framework governing the death penalty in Nigeria before exploring the relevant international human rights standards. Subsequent sections interrogate the tensions between domestic and international norms, draw comparative insights from other jurisdictions, and propose pathways for reconciliation. The article concludes with a critical evaluation of the prospects for reform and the future of the death penalty in Nigeria.

2. Conceptual and Theoretical Framework

2.1 The Right to Life: Nature, Scope, and Contestation

The right to life occupies a foundational position within both constitutional and international human rights law, often described as the supreme right upon which the enjoyment of all other rights depends. Its centrality derives not only from its intrinsic moral value but also from its functional role as a prerequisite for the realisation of all other legally protected interests. Within international law, instruments such as the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976)[5]recognise the inherent right to life and impose obligations on states to protect it against arbitrary deprivation. However, the right to life has historically been articulated in qualified terms. Article 6 of the ICCPR, while affirming the sanctity of life, does not categorically prohibit the death penalty but instead permits it under narrowly defined conditions. This formulation reflects a transitional compromise within international law, balancing state sovereignty with emerging human rights norms. Over time, the interpretive stance of international bodies—particularly the Human Rights Committee—has progressively narrowed the scope of permissible exceptions, emphasising that the death penalty must be restricted to the "most serious crimes" and applied only in exceptional circumstances.[6]

[5]International Covenant on Civil and Political Rights1976 (ICCPR), art 6.

[6] UN Human Rights Committee (n3).

A similar structure is evident within the Nigerian constitutional framework, where the right to life is guaranteed but expressly limited by an exception permitting execution pursuant to a court sentence. This dual formulation raises a fundamental conceptual issue: whether the right to life should be understood as inherently limited or as a near-absolute right subject only to historically contingent exceptions. Contemporary human rights discourse increasingly favours the latter view, treating any exception as requiring strict justification and continuous reassessment in light of evolving standards of decency and justice.

2.2 Theories of Punishment and the Death Penalty

The legitimacy of the death penalty is deeply rooted in broader theories of punishment, which provide the philosophical foundation for the exercise of penal authority. Two dominant paradigms viz retributive and utilitarian have historically shaped legal justifications for capital punishment. Retributive theory posits that punishment is justified as a matter of moral desert: individuals who commit grave offences deserve to suffer consequences proportionate to their wrongdoing. Within this framework, the death penalty is often presented as the ultimate expression of proportional justice, particularly in cases involving intentional and egregious loss of life. The appeal of retributivism lies in its moral clarity; however, it has been criticised for prioritising abstract notions of justice over practical concerns such as fallibility and systemic error. Utilitarian theories, by contrast, justify punishment on the basis of its social utility, particularly its capacity to deter crime, incapacitate offenders, and promote societal welfare. The death penalty has often been defended within this framework as a deterrent against serious crimes. Yet, empirical studies have consistently failed to establish a conclusive deterrent effect, thereby undermining one of the primary utilitarian justifications for its retention.[7] Moreover, the irreversible nature of capital punishment amplifies the consequences of wrongful convictions, raising serious concerns about its compatibility with a fallible criminal justice system.

Contemporary critiques of both theories highlight their limitations in justifying the death penalty within modern legal systems. Retributive

[7] Hood and Hoyle (n4).

arguments struggle to account for the moral implications of state-sanctioned killing, while utilitarian justifications falter in the absence of clear empirical support. These weaknesses have contributed to the growing perception that capital punishment is increasingly difficult to defend within a rights-oriented legal order.

2.3 Constitutional Interpretation and the Evolution of Rights

The debate over the death penalty is not merely philosophical; it is fundamentally tied to questions of constitutional interpretation. The manner in which courts interpret the right to life determines the extent to which capital punishment can be sustained within a constitutional framework. Originalism and living constitutionalism both offer contrasting perspectives on this issue however. Originalism emphasises fidelity to the intent of the framers and the historical context in which constitutional provisions were adopted. Under this approach, the inclusion of an express exception permitting the death penalty may be viewed as conclusive evidence of its constitutional legitimacy. However, this method risks entrenching historical practices that may no longer align with contemporary values or human rights standards.

Living constitutionalism, on the other hand, treats the Constitution as a dynamic instrument capable of evolving in response to changing societal norms. This approach allows courts to reinterpret constitutional provisions in light of current understandings of human dignity and justice. Within this framework, the right to life is not static but progressively expands, potentially rendering previously accepted exceptions subject to heightened scrutiny or even obsolescence.[8] In jurisdictions that have abolished the death penalty through judicial intervention, courts have often relied on a purposive and evolving interpretation of constitutional rights. This trend suggests that constitutional legitimacy is not fixed but contingent upon ongoing normative evaluation.

2.4 International Human Rights Law and Norm Diffusion

The increasing influence of international human rights law has significantly reshaped domestic legal landscapes, particularly in relation to fundamental rights such as the right to life. Even within

[8] Aharon Barak, *The Judge in a Democracy* (Princeton University Press, 2006).

dualist systems like Nigeria's, where treaties require domestication to acquire the force of law, international norms exert considerable persuasive authority in judicial interpretation and policy formulation. The global movement toward the abolition of the death penalty reflects a broader process of norm diffusion, whereby legal standards developed at the international level gradually influence domestic legal systems. Instruments such as the African Charter on Human and Peoples' Rights[9] although not explicitly prohibiting capital punishment, have been interpreted by regional bodies to favour restriction and eventual abolition. Similarly, the adoption of soft law measures, including resolutions calling for a moratorium on executions, reinforces the perception of an emerging international consensus against the death penalty. This evolving normative environment places pressure on retentionist states to justify their continued use of capital punishment. While sovereignty remains a core principle of international law, it is increasingly constrained by the expectation that states will align their domestic practices with internationally recognised human rights standards. For Nigeria, this dynamic creates a situation in which the formal legality of the death penalty must be assessed against a backdrop of growing normative disapproval.

2.5 Toward a Normative Synthesis

The conceptual and theoretical landscape outlined above reveals a convergence of factors that challenge the continued legitimacy of the death penalty. The right to life is increasingly understood as a near-absolute norm; traditional theories of punishment provide diminishing justification for capital punishment; and constitutional interpretation is evolving toward greater protection of human rights. At the same time, international law continues to exert pressure on domestic systems to restrict and ultimately abolish the death penalty. Taken together, these developments suggest that the retention of capital punishment in Nigeria cannot be justified solely on the basis of constitutional text or historical practice. Rather, it must be evaluated within a broader normative framework that prioritises human dignity, safeguards against irreversibility, and reflects the evolving standards of the

[9] African Commission on Human and Peoples' Rights, *General Comment No 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)* (2015).

international community. This framework provides the analytical foundation upon which the subsequent sections of this article will interrogate the constitutional and legal status of the death penalty in Nigeria.

3. Constitutional Legitimacy of the Death Penalty in Nigeria

3.1 Section 33 of the 1999 Constitution: Text, Structure, and Misreading

The constitutional foundation for the death penalty in Nigeria is located in section 33(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which provides that every person has a right to life and that no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. At first glance, this provision appears to offer a straightforward legal basis for capital punishment. However, such a reading is deceptively simplistic and has contributed to a longstanding doctrinal misinterpretation. A closer structural analysis reveals that section 33 is fundamentally a rights-conferring provision, not a punishment-authorising one. The right to life is articulated as the primary norm, while the death penalty appears only as an exception to that norm. The placement and phrasing of the exception are critical: it does not create an independent constitutional power to impose capital punishment but merely delineates the circumstances under which the deprivation of life will not be deemed unconstitutional.

The prevailing judicial and academic tendency in Nigeria has been to invert this structure—treating the exception as though it were a substantive endorsement of the death penalty. This article challenges that inversion. Properly construed, the exception clause must be interpreted narrowly, consistent with established principles of constitutional interpretation that require limitations on fundamental rights to be strictly construed.[10] The implication is that the constitutionality of the death penalty cannot be presumed; it must be continuously justified within the framework of the right it limits.

3.2 Judicial Attitudes and the Limits of Constitutional Engagement

[10] Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press 2012).

Nigerian courts have historically adopted a conservative and largely deferential approach to the death penalty, often avoiding substantive engagement with its constitutional implications. In cases such as *Kalu v State*,[11] the Supreme Court upheld the constitutionality of capital punishment, relying heavily on the textual exception contained in section 33 without undertaking a deeper interrogation of its normative or interpretive dimensions. This judicial posture reflects a broader reluctance to engage in rights-expansive interpretation, particularly where the Constitution appears to provide explicit textual guidance.

However, such an approach risks reducing constitutional adjudication to mere textualism, thereby neglecting the purposive and dynamic nature of fundamental rights. By treating the exception as conclusive, courts have effectively insulated the death penalty from meaningful constitutional scrutiny. This article contends that such judicial restraint is misplaced. The role of the judiciary in a constitutional democracy extends beyond literal interpretation to include the protection and advancement of fundamental rights. In failing to critically examine the death penalty within the broader context of the right to life, Nigerian courts have missed an opportunity to align constitutional jurisprudence with evolving human rights standards.

3.3 Statutory Framework and the Expansion of Capital Offences

The constitutional allowance for capital punishment is operationalised through various statutory provisions that prescribe the death penalty for specific offences. These include murder under the Criminal Code and Penal Code, armed robbery under the Robbery and Firearms (Special Provisions) Act, and treason under the Criminal Code.[12] Notably, the scope of capital offences in Nigeria raises significant constitutional concerns. International human rights law, particularly under the International Covenant on Civil and Political Rights,[13] limits the application of the death penalty to the "most serious crimes," generally understood to involve intentional killing. However, Nigerian law has, at various points, extended capital punishment to offences that

[11] [1998] 13 NWLR (Pt 583) 531 (SC).

[12] Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004; Penal Code Act, Cap P3 Laws of the Federation of Nigeria 2004; Robbery and Firearms (Special Provisions) Act, Cap R11 Laws of the Federation of Nigeria 2004.

[13] ICCPR (n5).

do not necessarily meet this threshold, thereby creating a potential conflict between domestic law and international standards.

Furthermore, the procedural safeguards surrounding the imposition of the death penalty remain uneven. Issues such as inadequate legal representation, reliance on confessional evidence, and systemic inefficiencies within the criminal justice system heighten the risk of wrongful convictions. These deficiencies underscore the fragility of the legal framework within which capital punishment operates and call into question its compatibility with constitutional guarantees of fair trial and due process.

3.4 Federalism, Legal Pluralism, and the Death Penalty

Nigeria's federal structure introduces an additional layer of complexity to the constitutional analysis of the death penalty. The coexistence of multiple legal systems has resulted in variations in both the scope and application of capital punishment across different states. In several northern states, the reintroduction of Sharia criminal law has expanded the range of capital offences to include crimes such as adultery and apostasy, at least in theory. While the practical enforcement of such provisions has been limited and often subject to appellate review, their existence raises significant constitutional and human rights concerns.[14] This pluralistic legal landscape challenges the notion of uniform rights protection under the Constitution. If the right to life is to be meaningfully guaranteed, its interpretation and application must not vary arbitrarily based on geographical or legal context. The divergence in capital punishment regimes across Nigeria therefore underscores the need for a coherent constitutional approach that prioritises fundamental rights over legal fragmentation.

3.5 Constitutional Supremacy and the Limits of Legitimacy

The doctrine of constitutional supremacy dictates that all laws and actions within Nigeria must conform to the provisions of the Constitution. However, supremacy does not equate to immutability. Constitutional provisions must be interpreted in a manner that preserves their coherence, relevance, and alignment with broader legal principles, including those derived from international law. The

[14] Human Rights Watch, *Political Shari'a? Human Rights and Islamic Law in Northern Nigeria* (2004).

continued reliance on section 33 as a definitive justification for the death penalty overlooks the possibility that constitutional meaning is not fixed but evolves over time. As international human rights norms increasingly favour abolition, the interpretive context within which section 33 operates is fundamentally altered. The question, therefore, is not whether the Constitution once permitted the death penalty, but whether its continued application remains consistent with the evolving understanding of the right to life. This article argues that the legitimacy of the death penalty in Nigeria cannot be sustained solely on the basis of constitutional text. Legitimacy must also be assessed in light of normative coherence, institutional reliability, and alignment with international standards. When these factors are taken into account, the constitutional foundation of capital punishment appears significantly less stable than is commonly assumed.

3.6 Reframing Constitutional Legitimacy

The foregoing analysis reveals that the constitutional legitimacy of the death penalty in Nigeria is far from settled. The dominant narrative that section 33 conclusively validates capital punishment rests on a narrow and formalistic interpretation that fails to engage with the broader context of rights protection and normative evolution. A more nuanced approach recognises that constitutional legitimacy is not static but contingent upon ongoing justification. The death penalty, as an exception to the right to life, must be subjected to continuous scrutiny, particularly in light of the irreversible nature of the punishment and the fallibility of the criminal justice system. Accordingly, this article maintains that the constitutional status of the death penalty in Nigeria is best understood not as firmly established, but as increasingly fragile and open to challenge. This reframing sets the stage for a deeper examination of international human rights standards and their implications for domestic constitutional law.

4. International Human Rights Standards on the Death Penalty

4.1 The Global Normative Shift toward Abolition

The regulation of the death penalty within international law has undergone a marked transformation over the past half-century, evolving from a position of cautious tolerance to one of increasing restriction and, in many quarters, outright abolition. This shift reflects a broader reconfiguration of the right to life from a formally protected interest subject to exceptions into a near-absolute norm anchored in

human dignity and the inherent worth of the human person. Empirical data consistently demonstrates a sustained global movement away from capital punishment. According to reports by Amnesty International,[15] the number of countries that have abolished the death penalty in law or practice now significantly exceeds those that retain it. Similarly, resolutions of the United Nations General Assembly[16] have repeatedly called for a universal moratorium on executions, framing abolition not merely as a policy preference but as an emerging international standard. This normative trajectory is not accidental; it is the product of sustained legal, institutional, and moral developments within the international system. The death penalty is increasingly viewed as incompatible with contemporary understandings of human rights, particularly in light of concerns regarding arbitrariness, discrimination, and the irreversible nature of the punishment.

4.2 Treaty-Based Regulation: From Permission to Restriction

International human rights treaties provide the primary legal framework governing the death penalty, and their evolution illustrates a clear movement toward restriction. The International Covenant on Civil and Political Rights represents the cornerstone of this framework. Article 6 recognises the inherent right to life while permitting the death penalty under limited conditions, including that it be imposed only for the "most serious crimes" and pursuant to a final judgment by a competent court. However, the structure of Article 6 is inherently restrictive. It does not affirm the death penalty as a right of states but instead treats it as an exception to a fundamental norm. Subsequent interpretive developments have reinforced this restrictive orientation. The Human Rights Committee, in its authoritative General Comment No 36,[17]emphasises that the death penalty is an "exceptional measure" and that states parties are under a duty to move progressively toward its abolition. This trajectory is further solidified by the Second Optional Protocol to the International Covenant on Civil and Political Rights (adopted 15 December 1989, entered into force 11 July 1991), which explicitly commits state parties to the abolition of the death penalty. Although Nigeria is not a party to this protocol, its existence

[15] Amnesty International, *Death Sentences and Executions 2023* (Amnesty International 2024).

[16] United Nations General Assembly, *Moratorium on the Use of the Death Penalty* UNGA Res 77/222 (15 December 2022).

[17] UN Human Rights Committee (n3).

signals a clear normative direction within international law—one that increasingly marginalizes retentionist positions.

Other treaty regimes reinforce this trend. The Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990)[18] prohibits the imposition of the death penalty for offences committed by persons under the age of eighteen, while various regional instruments impose additional restrictions. These layered constraints collectively narrow the space within which capital punishment can be lawfully applied.

4.3 The "Most Serious Crimes" Standard and Its Expansion

One of the most significant developments in the international regulation of the death penalty is the progressive narrowing of the "most serious crimes" threshold. Initially interpreted broadly, this standard has been increasingly confined to offences involving intentional killing. The Human Rights Committee has made clear that crimes such as drug-related offences, economic crimes, and other non-lethal offences do not meet this threshold.[19] This interpretation has profound implications for retentionist states, including Nigeria, where the scope of capital offences has historically extended beyond intentional homicide. The narrowing of this standard represents a critical mechanism through which international law constrains the application of the death penalty without imposing an immediate universal prohibition. By redefining the category of permissible offences, international law effectively reduces the practical scope of capital punishment and lays the groundwork for its eventual abolition.

4.4 Regional Human Rights Systems and the African Context

Within the African regional system, the African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986)[20]occupies a central position. Although the Charter does not explicitly prohibit the death penalty, its protection of the right to life under Article 4 has been interpreted progressively by regional bodies. The African Commission on Human and Peoples' Rights has played a pivotal role in this regard. In its General Comment No 3 on

[18] Convention on the Rights of the Child1990, art 37(a).

[19] UN Human Rights Committee(n3).

[20] African Charter on Human and Peoples' Rights 1986, art 4.

the right to life,[21] the Commission emphasises that the death penalty should be abolished or, at a minimum, strictly limited in accordance with international standards. The Commission has also adopted resolutions calling for a moratorium on executions and encouraging member states to move toward abolition.[22] In addition, the African Court on Human and Peoples' Rights has contributed to the development of a more rights-oriented jurisprudence, reinforcing the centrality of human dignity and the need for strict scrutiny of any limitation on the right to life.[23] These developments indicate that, even within a regional system that has not formally abolished the death penalty, there is a clear normative movement toward its restriction and eventual elimination. Nigeria, as a member of the African human rights system, is therefore subject to increasing regional pressure to align its practices with these evolving standards.

4.5 Soft Law, Customary Norms, and Emerging Consensus

Beyond binding treaties, a range of soft law instruments and practices contribute to the regulation of the death penalty. Resolutions of the United Nations General Assembly calling for a global moratorium on executions, while not legally binding, carry significant normative weight and reflect the collective position of the international community.[24] Repeated adoption of these resolutions, coupled with the growing number of abolitionist states, has led some scholars to argue that a customary international norm against the death penalty may be emerging.[25] While this claim remains contested, there is little doubt that the cumulative effect of state practice, *opinio juris*, and institutional advocacy has created a strong presumption against the legitimacy of capital punishment. International and non-governmental organisations, including Human Rights Watch,[26] have also contributed to this normative environment by documenting abuses associated with

[21] African Commission on Human and Peoples' Rights(n9).

[22] African Commission on Human and Peoples' Rights, *Resolution 42 on the Moratorium on the Death Penalty* (1999).

[23] FransViljoen, *International Human Rights Law in Africa* (2nd edn, Oxford University Press, 2012).

[24] United Nations General Assembly (n16).

[25] William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, Cambridge University Press, 2002).

[26] Human Rights Watch, *Nigeria: Death Penalty and the Criminal Justice System* (various reports).

the death penalty and advocating for its abolition. These efforts reinforce the perception that the death penalty is increasingly incompatible with contemporary human rights standards.

4.6 Implications for Retentionist States: The Case of Nigeria

The cumulative effect of these international developments is to place retentionist states such as Nigeria under significant normative and legal pressure. While international law does not yet impose a universal prohibition on the death penalty, it has created a framework within which its continued application must be rigorously justified. For Nigeria, this means that the constitutional allowance for capital punishment cannot be assessed in isolation from international standards. The restrictive interpretation of the right to life under international law, the narrowing of permissible offences, and the growing emphasis on abolition collectively challenge the continued legitimacy of the death penalty within the Nigerian legal system. This section therefore reinforces the central argument of this article: that the constitutional legitimacy of the death penalty in Nigeria is increasingly undermined by the evolving standards of international human rights law. The tension between domestic authorisation and international restriction is not merely theoretical but has practical implications for the future of capital punishment in Nigeria.

5. Nigeria's International Obligations vs. Domestic Reality: A Persistent Disconnect

5.1 The Dualist Framework and the Limits of Domestication

Nigeria's engagement with international human rights law is fundamentally shaped by its dualist constitutional structure. Under section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), treaties do not acquire the force of law domestically unless enacted by the National Assembly. This provision creates a formal barrier between Nigeria's international commitments and their internal legal enforceability, thereby allowing the state to ratify human rights instruments without fully integrating their standards into municipal law.

While Nigeria has ratified key instruments such as the International Covenant on Civil and Political Rights and domesticated the African Charter on Human and Peoples' Rights through the African Charter

(Ratification and Enforcement) Act,[27] the practical impact of these commitments remains uneven. The domestication of the African Charter has elevated its provisions to the status of municipal law, yet its application in capital punishment cases has been limited by judicial deference to the Constitution, particularly section 33. This structural arrangement produces a legal paradox: Nigeria is internationally bound to progressively restrict the death penalty, yet domestically empowered to retain and apply it. The result is not merely a technical inconsistency but a systemic disjunction between Nigeria's external obligations and internal legal practice.

5.2 Judicial Treatment of International Norms

The Nigerian judiciary has historically adopted a cautious approach toward the use of international human rights law in constitutional interpretation. Although courts have acknowledged the relevance of international instruments, their application has often been subordinate to constitutional text. In *Abacha v Fawehinmi*,[28] the Supreme Court recognised that the domesticated African Charter forms part of Nigerian law but maintained that it remains subject to the Constitution. This hierarchy has had significant implications for the death penalty: where section 33 appears to permit capital punishment, courts have been reluctant to invoke international norms to challenge its validity. This interpretive conservatism reflects a broader judicial philosophy that prioritises textual certainty over normative evolution. However, it also reveals a missed opportunity. Even within a dualist framework, international law can serve as a persuasive interpretive tool, particularly in relation to fundamental rights. By failing to utilise these norms dynamically, Nigerian courts have contributed to the persistence of doctrinal rigidity in the face of evolving human rights standards.

5.3 Compliance Gaps: Between Formal Adherence and Substantive Divergence

Nigeria's engagement with international human rights law on the death penalty is characterised by a pattern of formal compliance and substantive divergence. While the state has ratified key treaties and

[27] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004.

[28] [2000] 6 NWLR (Pt 660) 228 (SC).

participated in international processes, its domestic legal framework and practices often fall short of the standards those instruments prescribe.

5.3.1 Scope of Capital Offences

As previously noted, international law[29] restricts the death penalty to the "most serious crimes," typically interpreted as offences involving intentional killing. Nigerian law,[30] however, continues to prescribe capital punishment for a broader range of offences, including armed robbery and certain offences under Sharia law that do not necessarily involve the taking of life. This divergence places Nigeria in tension with its obligations under the ICCPR and undermines the principle of restrictive application.

5.3.2 Procedural and Institutional Deficiencies

International standards require that the death penalty, where retained, be imposed only following strict adherence to fair trial guarantees. However, systemic deficiencies within Nigeria's criminal justice system raise serious concerns in this regard. Reports by Amnesty International and Human Rights Watch[31] have documented issues such as prolonged pre-trial detention, inadequate legal representation, reliance on coerced confessions, and delays in the appellate process. These deficiencies are not incidental; they are structural. In a system where procedural safeguards are inconsistently applied, the imposition of an irreversible punishment such as death becomes particularly problematic. The gap between formal legal standards and actual practice thus constitutes a significant breach of Nigeria's international obligations.

5.3.3 De Facto Moratorium vs. De Jure Retention

Nigeria has, at various times, observed a *de facto* moratorium on executions, with long periods during which no executions are carried out.[32] While this practice may signal a degree of alignment with

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[29] UN Human Rights Committee (n3).

[30] Criminal Code Act; Penal Code Act; Robbery and Firearms (Special Provisions) Act.

[31] Amnesty International, *Nigeria: Waiting for the Hangman* (2014); Human Rights Watch, *Nigeria: Criminal Justice System and Death Penalty* (various reports).

[32] *Ibid*.

international calls for restraint, it does not amount to a formal legal commitment. Death sentences continue to be imposed, and the legal framework supporting capital punishment remains intact. This situation creates a form of normative ambiguity: Nigeria appears to move toward abolition in practice while maintaining retention in law. Such ambiguity undermines legal certainty and fails to provide a coherent basis for rights protection.

5.4 Regional Oversight and Normative Pressure

Within the African human rights system, Nigeria is subject to oversight by bodies such as the African Commission on Human and Peoples' Rights. The Commission has consistently advocated for the restriction and eventual abolition of the death penalty, emphasising the need for compliance with international standards. Through instruments such as General Comment No 3 on the right to life,[33] the Commission has clarified that the death penalty should be progressively eliminated and, where retained, strictly limited. It has also adopted resolutions calling for a moratorium on executions and encouraging states to move toward abolition.[34] Although the decisions and recommendations of the Commission are not directly enforceable in the same manner as domestic law, they carry significant normative weight. Nigeria's continued retention of the death penalty in the face of such regional pressure highlights the growing dissonance between its legal framework and the expectations of the African human rights system.

5.5 Structural Constraints on Harmonisation

The persistence of this disconnect is not merely the result of legal oversight; it is rooted in deeper structural and institutional factors. First, Nigeria's federal structure and legal pluralism complicate the uniform application of human rights norms. Variations in criminal law across states, particularly in relation to Sharia-based offences, create inconsistencies that hinder comprehensive reform. Second, judicial conservatism limits the capacity of courts to drive normative change. By adhering closely to textual interpretations of the Constitution, the judiciary has been reluctant to engage with the broader implications of

[33] African Commission on Human and Peoples' Rights (n9).

[34] African Commission on Human and Peoples' Rights (n22).

international human rights law. Third, political considerations play a significant role. The death penalty is often framed as a tool for maintaining public order and responding to serious crime, making it politically sensitive to challenge or abolish. Finally, institutional weaknesses within the criminal justice system such as underfunding, lack of training, and administrative inefficiencies further impede the implementation of international standards. These factors collectively demonstrate that the gap between Nigeria's international obligations and domestic practice is structural rather than incidental, requiring more than incremental reform to address.

5.6 Reassessing Compliance: Legality vs. Legitimacy

The analysis above reveals a critical distinction between legality and legitimacy. From a strictly formal perspective, Nigeria may argue that it remains within the bounds of international law, as the death penalty is not yet universally prohibited. However, this position overlooks the evolving nature of international human rights norms and the increasing expectation of progressive restriction and abolition. Legitimacy, in this context, is not determined solely by adherence to minimum legal standards but by alignment with the broader trajectory of human rights development. When assessed against this standard, Nigeria's retention of the death penalty appears increasingly difficult to justify. The combination of overbroad legal provisions, procedural deficiencies, and resistance to normative evolution undermines the credibility of its position within the international community.

5.7The Depth of the Disconnect

Nigeria's engagement with international human rights law on the death penalty is characterised by a persistent and multifaceted disconnect. While the state has formally committed to the protection of the right to life, its domestic legal framework and practices reveal significant departures from the standards articulated in international and regional instruments. This section demonstrates that the issue is not merely one of legal inconsistency but of normative divergence. The constitutional and statutory foundations of the death penalty in Nigeria are increasingly at odds with the evolving global consensus, creating a tension that cannot be sustained indefinitely. This unresolved contradiction sets the stage for the next phase of analysis, where the precise points of tension between domestic and international law are dissected, and the case for reconciliation is further developed.

6. Points of Tension: Dissecting the Core Legal and Normative Conflict

6.1 Constitutional Text vs. Evolving International Norms

At the heart of the death penalty debate in Nigeria lies a fundamental clash between constitutional text and the evolving trajectory of international human rights law. Section 33(1) of the Constitution appears, on its face, to permit the deprivation of life pursuant to a lawful sentence. However, as established in earlier sections, this provision is better understood as a qualified exception rather than a blanket endorsement of capital punishment. In contrast, international human rights law has progressively narrowed the circumstances under which the death penalty may be applied, moving steadily toward abolition.[35] The interpretive position of the Human Rights Committee reinforces the view that the death penalty is an exceptional and diminishing practice, one that must be strictly justified and ultimately eliminated.[36]The tension, therefore, is not merely between two legal regimes, but between static constitutional interpretation and dynamic normative evolution. While the Nigerian Constitution remains textually unchanged, the meaning of the right to life within the broader legal ecosystem has shifted significantly. The failure to reconcile these positions results in a legal framework that is formally coherent but substantively outdated.

6.2 Sovereignty vs. Universality of Human Rights

A second axis of tension emerges from the interplay between state sovereignty and the universality of human rights. Nigeria, like all sovereign states, retains the authority to determine its criminal justice policies, including the imposition of capital punishment. This sovereignty is often invoked to justify the continued retention of the death penalty, particularly in response to domestic security concerns and public opinion. However, sovereignty is no longer absolute within the contemporary international legal order. By ratifying instruments such as the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, Nigeria has accepted limitations on its discretion, particularly in relation to fundamental rights. These instruments reflect the principle that certain

[35] ICCPR, art 6.

[36] UN Human Rights Committee (n3).

rights possess a universal character that transcends national boundaries. The resulting tension is structural: Nigeria seeks to assert its sovereign prerogative to retain the death penalty, while simultaneously participating in a legal system that increasingly constrains that prerogative. This dual positioning is inherently unstable. It allows Nigeria to invoke sovereignty when convenient, while benefiting from the legitimacy conferred by participation in the international human rights regime.

6.3 Legality vs. Legitimacy

Perhaps the most critical tension in this discourse is the distinction between legality and legitimacy. From a strictly doctrinal perspective, the death penalty remains lawful under Nigerian law. Section 33 provides a constitutional basis, and statutory provisions operationalise its application.[37]However, legality alone does not suffice to establish legitimacy. In contemporary constitutional and human rights theory, legitimacy is assessed not only by reference to formal compliance with legal rules but also by alignment with underlying principles such as human dignity, proportionality, and justice. When evaluated against these criteria, the death penalty appears increasingly difficult to justify. Its irreversible nature, combined with the fallibility of the criminal justice system, raises serious concerns about its compatibility with the right to life. Moreover, the global movement toward abolition suggests that capital punishment is becoming normatively obsolete, even in jurisdictions where it remains legally permissible.This disjunction between legality and legitimacy lies at the core of the Nigerian dilemma. The death penalty persists not because it is beyond challenge, but because it has not yet been sufficiently interrogated within a legitimacy framework.

6.4 Structural Deficiencies and the Risk of Irreversibility

The tension between domestic law and international standards is further exacerbated by systemic deficiencies within Nigeria's criminal justice system. As documented by organisations such as Amnesty

[37] Criminal Code Act; Penal Code Act; Robbery and Firearms (Special Provisions) Act.

International and Human Rights Watch,[38] issues such as wrongful convictions, coerced confessions, inadequate legal representation, and prolonged delays are not uncommon. These deficiencies are particularly significant in the context of capital punishment, where the consequences of error are irreversible. The risk of executing an innocent person is not merely theoretical; it is a real and persistent concern in systems with limited procedural safeguards. International human rights law places significant emphasis on this risk, treating it as a key justification for restricting and ultimately abolishing the death penalty.[39] In Nigeria, however, the continued reliance on capital punishment despite these systemic weaknesses highlights a profound disconnect between legal authority and institutional capacity.

6.5 Federalism, Pluralism, and Uneven Rights Protection

Nigeria's federal structure and plural legal system introduce additional layers of tension. The coexistence of statutory law, customary law, and Islamic (Sharia) law results in variations in the application of the death penalty across different jurisdictions. In some northern states, the scope of capital offences under Sharia law extends beyond the limits recognised under international human rights standards.[40] While such provisions are often subject to appellate review and constitutional challenge, their existence underscores the lack of uniformity in the protection of the right to life. This fragmentation undermines the principle of equal protection and raises questions about the coherence of Nigeria's constitutional order. A fundamental right such as the right to life cannot be meaningfully guaranteed if its scope and protection vary significantly depending on geographic or legal context.

6.6 The Illusion of Stability: Why the Status Quo is Unsustainable

Taken together, these tensions reveal that Nigeria's current position on the death penalty is not stable but precarious. The apparent coexistence of constitutional authorisation and international obligation creates an illusion of equilibrium, masking deeper contradictions within the legal system. The continued reliance on section 33 as a definitive justification for the death penalty ignores the evolving nature of constitutional interpretation and international law. At the same time,

[38] Amnesty International; Human Rights Watch (n31).

[39] UN Human Rights Committee (n3).

[40] Human Rights Watch (n14).

the failure to fully internalize international norms undermines Nigeria's credibility within the global human rights framework. This article contends that the status quo is unsustainable for three reasons:

1. Normative Pressure: The global movement toward abolition will continue to intensify, increasing scrutiny on retentionist states.
2. Doctrinal Instability: The interpretive foundation of section 33 is vulnerable to challenge, particularly under a purposive approach.
3. Institutional Weakness: Persistent deficiencies in the criminal justice system amplify the risks associated with capital punishment.

The convergence of these factors suggests that Nigeria cannot indefinitely maintain its current position without confronting the underlying contradictions.

6.7 From Tension to Transition

The tensions identified in this section are not merely obstacles; they are indicators of an ongoing transition within the legal and normative landscape. The death penalty in Nigeria exists at the intersection of competing forces viz constitutional text, judicial interpretation, international obligation, and societal expectation. The critical question is not whether these tensions exist, but how they will be resolved. Will Nigeria move toward alignment with international human rights standards, or will it continue to rely on a formalistic interpretation of constitutional provisions? This article argues that resolution is inevitable. The only uncertainty lies in the path and pace of change. The next section therefore shifts from diagnosis to prescription, outlining the legal and policy measures necessary to reconcile constitutional legitimacy with evolving human rights standards.

7. Comparative Jurisprudence and Lessons for Nigeria

7.1 Introduction: Why Comparative Analysis Matters

Comparative jurisprudence serves a critical function in constitutional and human rights adjudication, particularly where domestic legal systems confront normative dilemmas with no easy internal resolution. In the context of the death penalty, comparative analysis demonstrates that the tension between constitutional legitimacy and evolving human

rights standards is neither unique to Nigeria nor insurmountable. Rather, several jurisdictions faced with similar textual authorisations and socio-political pressures have successfully navigated this conflict through judicial innovation, legislative reform, or a combination of both. The relevance of these comparative experiences lies not in their direct transpose ability, but in their capacity to illuminate viable pathways for doctrinal and normative transformation.

7.2 The Abolitionist Model of South Africa

The most instructive example of judicial abolition within a constitutional framework is found in *S v Makwanyane*[41] where the Constitutional Court of South Africa declared the death penalty unconstitutional. Despite the absence of an explicit constitutional prohibition of capital punishment, the Court grounded its decision in the rights to life and human dignity, interpreting these provisions purposively and in light of international human rights norms. Crucially, the Court rejected a purely textual or historical approach to constitutional interpretation. Instead, it adopted a value-based methodology, emphasising that constitutional rights must be understood within the broader framework of a democratic and rights-oriented society. The death penalty was found to be incompatible with human dignity due to its inherent cruelty, arbitrariness, and irreversibility. The South African experience is particularly relevant to Nigeria for two reasons. First, it demonstrates that constitutional silence or ambiguity does not preclude abolition through judicial interpretation. Second, it illustrates the legitimacy of relying on international human rights law as an interpretive guide, even in the absence of direct domestication. The key lesson here is clear: constitutional legitimacy is not fixed—it can be redefined through principled judicial reasoning.

7.3 The Restrictive Retention Model: United States

In contrast to South Africa's abolitionist approach, the United States represents a model of restrictive retention, where the death penalty remains constitutionally permissible but is subject to extensive limitations. The evolution of Unites States (US) jurisprudence under the Eighth Amendment's prohibition of "cruel and unusual punishments" reflects a gradual narrowing of the scope of capital

[41] [1995] 3SA 391 (CC).

punishment. In *Furman v Georgia*,[42] the United States' Supreme Court temporarily invalidated the death penalty due to its arbitrary application. Although capital punishment was later reinstated in *Gregg v Georgia*,[43] it was accompanied by procedural safeguards designed to minimise arbitrariness. Subsequent decisions further restricted its application, prohibiting the execution of juveniles[44] and persons with intellectual disabilities.[45] This jurisprudential trajectory illustrates how a retentionist system can progressively align itself with evolving standards of decency without immediate abolition. The US model demonstrates that even where the death penalty is constitutionally entrenched, courts can significantly constrain its application through incremental, rights-based interpretation. For Nigeria, the relevance of this model lies in its pragmatism. It suggests that reform need not be abrupt; it can proceed through gradual restriction, enhanced safeguards, and judicial oversight.

7.4 The African Middle Ground: Progressive Restriction without Formal Abolition

Across Africa, a growing number of states have adopted what may be described as a *defacto* abolitionist stance, retaining the death penalty in law while refraining from its implementation in practice. Countries such as Ghana and Kenya have moved toward restricting capital punishment, with courts and policymakers increasingly questioning its compatibility with constitutional rights. In Kenya, the Supreme Court in *Francis Karioko Muruatetu v Republic*[46] declared the mandatory death penalty unconstitutional, emphasising the need for judicial discretion and proportionality in sentencing. While the Court did not abolish the death penalty outright, its decision significantly altered the legal landscape by removing its automatic application.

Similarly, several African states have instituted moratoria on executions, reflecting a gradual shift toward abolition without formal legislative change. These developments are reinforced by the normative influence of the African Commission on Human and Peoples' Rights, which has consistently advocated for restriction and

[42] [1972] 408 US 238.

[43] [1976] 428 US 153.

[44] *Roper v Simmons* [2005] 543 US 551.

[45] *Atkins v Virginia* [2022] 536 US 304.

[46] [2017] eKLR (Supreme Court of Kenya).

eventual abolition. This "middle ground" approach is particularly instructive for Nigeria. It demonstrates that normative convergence with international standards can occur incrementally, even within politically and legally complex environments.

7.5 Extracting Lessons: Pathways for Nigeria

The comparative analysis above yields several critical insights for Nigeria:

7.5.1 Judicial Courage as a Catalyst

The South African experience underscores the transformative potential of the judiciary. Nigerian courts, by adopting a purposive and rights-oriented approach, can reinterpret section 33 in a manner that aligns with contemporary human rights standards.

7.5.2 Incremental Restriction as a Viable Strategy

The US model demonstrates that even within a retentionist framework, the scope of the death penalty can be progressively narrowed through judicial and legislative action. This approach may be more politically feasible in Nigeria's current context.

7.5.3 The Role of Regional Norms

Developments within Africa highlight the importance of regional influence. Nigeria cannot remain insulated from the normative shifts occurring within the African human rights system, particularly under the guidance of the African Commission on Human and Peoples' Rights.

7.5.4 The Inevitability of Transition

Perhaps the most important lesson is that the trajectory toward restriction and abolition is not speculative but observable across multiple jurisdictions. The question is not whether Nigeria will confront this transition, but how and when. The comparative evidence dismantles any notion that Nigeria's position is uniquely constrained or resistant to change. Other jurisdictions, faced with similar constitutional provisions and societal pressures, have successfully recalibrated their legal systems to reflect evolving human rights norms. Nigeria's continued reliance on formal constitutional authorisation, in the face of overwhelming comparative and international developments, therefore appears less a matter of necessity and more a function of institutional inertia and interpretive conservatism. This section reinforces the central thesis of the article: that the constitutional legitimacy of the death penalty in Nigeria is neither absolute nor

immutable. Comparative jurisprudence demonstrates that alternative pathways exist and that failure to pursue them is a matter of choice, not constraint.

8. Pathways to Reconciliation: Toward Doctrinal Coherence and Normative Alignment

8.1 From Diagnosis to Prescription

The preceding sections have established that Nigeria's retention of the death penalty is marked by a deep and persistent tension between constitutional text, judicial interpretation, and evolving international human rights standards. The issue is no longer whether this tension exists, but how it may be resolved in a manner that preserves constitutional integrity while aligning with contemporary human rights norms.This section advances a structured framework for reconciliation, drawing on comparative insights and doctrinal analysis to propose legally viable and context-sensitive pathways. These pathways are not mutually exclusive; rather, they represent complementary strategies that may operate concurrently or sequentially.

8.2 Constitutional Reinterpretation: Reclaiming Section 33

The most immediate and doctrinally grounded pathway lies in the reinterpretation of section 33(1) of the Constitution. As argued in Section 3, the prevailing understanding of this provision as an endorsement of the death penalty is both textually and conceptually flawed. A purposive and rights-oriented interpretation would instead treat the exception clause as a narrow limitation subject to strict scrutiny. Nigerian courts possess the constitutional authority to adopt such an approach. Even within a dualist framework, international human rights norms particularly those embodied in the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights may be utilised as interpretive aids in defining the scope of fundamental rights. This approach does not require constitutional amendment; it requires judicial willingness. By interpreting section 33 in light of evolving standards of human dignity and proportionality, courts can significantly restrict the application of the death penalty, potentially rendering it unconstitutional in practice, if not in express terms.

8.3 Legislative Reform: From Retention to Restriction

While judicial reinterpretation provides a doctrinal entry point, sustainable reform requires legislative action. The National Assembly plays a critical role in aligning Nigeria's statutory framework with international standards. A phased legislative strategy may be adopted:

1. Short-term: Restrict the death penalty to offences that meet the "most serious crimes"[47]threshold, in line with international standards.
2. Medium-term: Introduce a statutory moratorium on executions, formalising the existing de facto restraint.
3. Long-term: Abolish the death penalty through legislative amendment, replacing it with alternative sanctions such as life imprisonment.

Such a graduated approach reflects both legal pragmatism and political reality. It allows Nigeria to progressively align with international norms without triggering immediate institutional resistance.

8.4 Strengthening Judicial Safeguards and Due Process

Even within a retentionist framework, the legitimacy of the death penalty depends on the robustness of procedural safeguards. As demonstrated in earlier sections, deficiencies in Nigeria's criminal justice system significantly undermine this legitimacy.

Reform efforts must therefore prioritise:

1. Enhanced access to competent legal representation for all capital defendants.
2. Strict evidentiary standards, particularly in relation to confessional evidence.
3. Mandatory appellate review of all death sentences.
4. Improved judicial training on human rights standards and capital case adjudication.

These measures are not merely procedural; they are substantive safeguards against irreversible injustice. Their implementation would reduce the risk of wrongful convictions and align Nigeria's practices more closely with international expectations.

8.5 Executive Action: The Role of Clemency and Moratoria

[47]UN Human Rights Committee (n3).

The executive branch also possesses significant tools for mitigating the impact of the death penalty. The constitutional prerogative of mercy provides a mechanism for commuting death sentences to lesser penalties, thereby reducing the number of executions without requiring immediate legal reform. In addition, the executive can formally declare and maintain a moratorium on executions, signalling a commitment to human rights while allowing space for broader legal reform. Such actions have been adopted in several jurisdictions as transitional measures toward abolition. While executive intervention is inherently discretionary, its strategic use can serve as a bridge between legal retention and normative transition.

8.6 Harmonising Federal and Plural Legal Systems

Nigeria's federal structure and plural legal system present unique challenges for the uniform application of human rights norms. Any meaningful reconciliation must therefore address the inconsistencies arising from the coexistence of statutory, customary, and Islamic legal frameworks. This requires:

1. Ensuring that all state-level laws, including those derived from Sharia, conform to constitutional standards and international obligations.
2. Strengthening federal oversight mechanisms to promote uniform rights protection.
3. Encouraging inter-jurisdictional dialogue and cooperation on criminal justice reform.

The goal is not to eliminate legal pluralism, but to ensure that it operates within a coherent constitutional and human rights framework.

8.7 Engagement with Regional and International Mechanisms

Nigeria's participation in regional and international human rights systems provides an additional avenue for reform. Engagement with bodies such as the African Commission on Human and Peoples' Rights can facilitate the incorporation of evolving standards into domestic law and practice. This includes:

a. Compliance with recommendations and general comments issued by regional bodies.
b. Active participation in international human rights dialogues.
c. Consideration of accession to abolition-oriented instruments, such as the Second Optional Protocol to the ICCPR.

Such engagement reinforces Nigeria's commitment to human rights and enhances its credibility within the international community.

8.8 Institutional and Cultural Reorientation

Beyond formal legal reform, reconciliation requires a broader shift in institutional culture and public perception. The persistence of the death penalty is partly sustained by societal attitudes that view it as a necessary tool of justice. Addressing this requires:

a. Public education on the human rights implications of capital punishment.
b. Capacity-building for legal practitioners, judges, and law enforcement officials.
c. Promotion of alternative narratives of justice centred on rehabilitation and restorative principles.

While such measures may appear peripheral, they are essential for creating the normative conditions necessary for sustainable reform.

8.9 A Coherent Strategy for Transition

The pathways outlined above collectively form a multi-layered strategy for reconciling Nigeria's constitutional framework with international human rights standards. Their effectiveness lies in their integration:

a. Judicial reinterpretation provides immediate doctrinal impact.
b. Legislative reform ensures long-term structural change.
c. Executive action offers transitional flexibility.
d. Institutional and cultural shifts sustain normative alignment.

The central insight is that reconciliation is not a single act but a process of legal and normative transformation. Nigeria's current position is not irredeemable, but it requires deliberate and coordinated action across multiple levels of governance.

8.10 From Possibility to Necessity

What emerges from this analysis is that reconciliation is not merely possible—it is increasingly necessary. The tension between constitutional legitimacy and international human rights standards cannot be indefinitely maintained without undermining the coherence and credibility of Nigeria's legal system. The pathways identified in this section demonstrate that Nigeria is not constrained by its constitutional framework; rather, it is presented with a set of choices.

Whether through judicial innovation, legislative reform, or executive action, the tools for alignment already exist. The critical question, therefore, is not whether reconciliation can occur, but whether there is sufficient institutional will and normative commitment to bring it about.

9. Critical Evaluation and Conclusion

9.1 Reassessing the Constitutional Narrative

This article set out to interrogate the perceived constitutional legitimacy of the death penalty in Nigeria and its compatibility with evolving international human rights standards. The analysis reveals that the dominant narrative treating section 33(1) of the Constitution as a definitive endorsement of capital punishment is fundamentally flawed. Rather than conferring an unqualified constitutional mandate, the provision establishes a narrowly framed exception to the right to life, one that must be interpreted within the broader context of rights protection and normative evolution. The persistence of a formalistic interpretation has obscured this distinction, allowing the death penalty to operate under the veneer of constitutional certainty. Yet, as demonstrated throughout this study, such certainty is illusory. When subjected to purposive interpretation and informed by international human rights norms, the constitutional foundation of capital punishment appears far more contingent and contestable than traditionally assumed.

9.2 The Fragility of Legitimacy

A central theme emerging from this analysis is the divergence between legality and legitimacy. While the death penalty remains formally lawful within Nigeria's constitutional and statutory framework, its normative legitimacy is increasingly untenable. The global shift toward abolition, reinforced by instruments such as the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, has redefined the parameters within which capital punishment can be justified. Within this evolving framework, the death penalty is no longer assessed solely on the basis of legal permissibility but on its compatibility with fundamental principles such as human dignity, proportionality, and the sanctity of life. Nigeria's continued reliance on capital punishment, particularly in the face of systemic deficiencies within its criminal justice system, undermines its claim to alignment with these principles. The

legitimacy of the death penalty is further weakened by its irreversible nature and the persistent risk of wrongful conviction. In a legal system where procedural safeguards are inconsistently applied, the imposition of an irreversible punishment cannot be reconciled with the demands of justice. The result is a regime that is legally defensible in form but normatively indefensible in substance.

9.3 The Illusion of Equilibrium

The current Nigerian position on the death penalty reflects what may be described as an illusion of equilibrium. On the one hand, the Constitution appears to authorise capital punishment; on the other, international law imposes increasing restrictions and expectations of abolition. This apparent balance, however, conceals a deeper instability. As demonstrated in the preceding sections, the forces shaping the evolution of the right to life are not static. International norms continue to develop, comparative jurisprudence increasingly favours restriction or abolition, and regional bodies exert growing pressure on retentionist states. Within this dynamic environment, Nigeria's reliance on a static interpretation of constitutional text is unsustainable. The illusion of equilibrium persists only so long as the underlying tensions remain unaddressed. Once subjected to critical scrutiny, it becomes clear that the coexistence of constitutional authorisation and international obligation is not a stable equilibrium but a transitional condition.

9.4 Is Reconciliation Possible Without Constitutional Amendment?

A key question addressed in this article is whether reconciliation between Nigeria's constitutional framework and international human rights standards can be achieved without formal constitutional amendment. The analysis suggests that, while amendment may ultimately be desirable, it is not an immediate prerequisite for meaningful reform. Judicial reinterpretation of section 33, informed by international norms and guided by a purposive approach to rights, provides a viable pathway for restricting the application of the death penalty. Legislative reform, including the narrowing of capital offences and the introduction of a moratorium on executions, can further align domestic law with international standards. Executive action, through the exercise of clemency powers, offers an additional mechanism for mitigating the impact of capital punishment. However, these measures, while significant, are inherently transitional. They

address the symptoms of the underlying tension without fully resolving its structural basis. In the long term, a more definitive resolution may require constitutional reconsideration, particularly if Nigeria is to achieve full alignment with the global movement toward abolition. The continued retention of the death penalty in its current form carries significant legal, moral, and institutional costs. At the international level, it exposes Nigeria to sustained scrutiny and undermines its credibility within the human rights regime. At the domestic level, it perpetuates a system in which the ultimate punishment is administered within a framework marked by procedural deficiencies and institutional weaknesses. More fundamentally, inaction risks entrenching a form of justice that is increasingly out of step with contemporary standards. The longer the disconnect between constitutional text and normative evolution persists, the more difficult it becomes to maintain the coherence and legitimacy of the legal system.

10. Conclusion

This article concludes with a clear and unequivocal position: the death penalty in Nigeria, while formally lawful, is doctrinally fragile and normatively indefensible. Its continued justification rests on an outdated interpretation of constitutional provisions and an insufficient engagement with the evolving standards of international human rights law. The question is no longer whether the death penalty can be defended within the narrow confines of constitutional text, but whether it can withstand scrutiny within a broader legal and moral framework that prioritises the protection of life and human dignity. On this question, the answer is increasingly clear.

Nigeria stands at a critical juncture in the evolution of its legal system. The tension between constitutional legitimacy and international human rights standards is not merely a technical issue; it is a reflection of deeper questions about the nature of justice, the limits of state power, and the value placed on human life. The pathways for reconciliation have been identified. The comparative experience demonstrates that transformation is both possible and achievable. What remains is the question of choice. Nigeria may continue to rely on formal legality to sustain the death penalty, or it may embrace the normative evolution that is reshaping the global understanding of the right to life. The former preserves the status quo; the latter aligns the law with the

demands of justice. The space for neutrality is rapidly disappearing. There is the need for judicial reform and interpretation through purposive Interpretation of Section 33. Nigerian courts should adopt a purposive and teleological approach when interpreting section 33 of the Constitution.[48] This means reading the right to life broadly and applying exceptions (like capital punishment) narrowly, in alignment with evolving human rights norms.[49] Judicial reforms should also imbibe and incorporate international norms. Judges should give weight to the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights when adjudicating capital cases. This can be done through persuasive reasoning, even without direct treaty incorporation. Also, procedural safeguards should be strengthened. The courts must ensure that trials for capital offences meet the highest standards of due process, including access to competent legal counsel, adequate time for defence preparation, and opportunities for appeal and review.[50]

Legislative actions should also be pursued to narrowing the scope of capital offences. Parliament should reduce the list of capital crimes to the "most serious crimes" as defined by international law, primarily intentional killings, and remove all capital provisions for non-lethal offences.[51] The National Assembly should legislate a temporary moratorium on executions. This would allow systemic issues to be addressed, including wrongful convictions, corruption, and procedural deficiencies. Domestic legislation should explicitly reflect international standards limiting or restricting capital punishment, such as safeguards for minors, persons with mental disabilities, and pregnant women. The President and state governors should actively exercise clemency and commuting powers in capital cases, particularly in circumstances where procedural irregularities or doubts about guilt exist.[52]Further, the executive could develop and promote life imprisonment or restorative justice as viable alternatives, reducing the reliance on irreversible punishments. Judges and legal practitioners should receive specialised training on the evolving standards regarding

[48] *Abacha v Fawehinmi*[2000] 6 NWLR (Pt 660) 228 (SC) 289–290.

[49] ICCPR, art 6.

[50] Hoodand Hoyle (n4) 120–125.

[51] UN Human Rights Committee (n3) 35–50.

[52] Viljoen(n23) 231–240.

the right to life, international jurisprudence on capital punishment, and comparative legal frameworks.[53]Government should also invest in investigative capacity, forensic laboratories, and criminal record systems to minimise wrongful convictions and improve the accuracy of trials.[54] Civil society, human rights organisations, and academia should conduct awareness campaigns highlighting the risks, inefficacy, and moral considerations of the death penalty.[11] Nigeria should also proactively engage with UN and AU human rights mechanisms, submitting reports and responding to recommendations regarding capital punishment.[55]

[53] Schabas WA, *The Abolition of the Death Penalty in International Law* (3rd edn, Cambridge University Press, 2002) 234–240.

[54] Amnesty International (n31) 15–22.

[55] UN Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of Nigeria* (2019) UN Doc CCPR/C/NGA/CO/4, 12–15.