# FASHIONING APPROPRIATE LEGAL FRAMEWORK FOR IMPROVED CAPITAL CRIMES TRIAL AND SENTENCING

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***Abstract***

***Despite what looks like a stream of International response to the call for abolition of capital punishment but prescription of death penalty for contemporary evolution of crimes like kidnapping, terrorism and other forms of violent crimes point to unwillingness of successive administrations in Nigeria to follow the world trend. That there are lapses in the Nigerian legal framework for criminal trial is no longer a controvertible fact but failure to address such gaps in the trial of capita offences gives cause for concern, giving impression to the International Community that Nigeria places very little value on human life. It is for this reason this paper, using doctrinal approach interrogated existing legal framework for the trial of capital crimes and found that efforts in addressing the lapses, including those endorsed in the Administration of Criminal Justice Act, 2015 have not gone far enough in addressing the lapses. The paper thus recommended the need to take clue from more natural criminal trial jurisdictions to evolve a more transparent legal framework for improved capital crimes trial and sentencing in Nigeria.***
***Operative Words: Fashioning, Appropriate Legal Framework, Improved Capital Crimes Trial, and Sentencing.***

## Introduction

The volatility of the issue whether to abolish or retain capital punishment has been compounded within academic circle and leaders of thought at various levels, world over but the permissive provision of article 1 (2) of the Second Optional Protocol of International Covenant on Civil, and Political Rights added another dimension to the already divisive setting. Influenced by cultural, moral, religious and socio-political peculiarities of each country, successive administrations of pro-death penalty. Countries are hardly forth-coming in taking a stand, for or against universal approach to the philosophy of death penalty as a result oriented form of punishment.

In the last few decades, the argument has been so much about either that there are no dependable data to show the deterrent capacity of this form of punishment and that it being irredeemable, the possibility of executing innocent convicts could be catastrophic. With such sentiments, several countries, including Nigeria have been blackmailed into constructive years of moratorium on execution of convicts even when the country loathes total abolition.

As it is in Nigeria, the fact that several laws have evolved in recent years, including anti-kidnapping laws of Federal and State Governments prescribing death penalty point to the fact that the country is not in a hurry to abolish this form of punishment. This is what spells out significance of this paper, aimed at fashioning a more appropriate legal framework for capital crime regime, to cater for fears of antagonists of death penalty and the International Community in general.

**Conceptual Clarification**

Nigeria, no doubt, is a pro-death penalty Nation. As earlier mentioned in the introductory note to this paper, it is more of an appropriate legal framework for improved capital crime Regime in Nigeria. For this reason, this paper will avoid dabbling clarification of issues that drag it into the murky waters of argument for or against death penalty and instead, discuss how to fashion out an improved, transparent legal framework for capital crimes trial, and sentencing.

**Towards an Improved Capital Sentence Regime**

Looking intently at the existing legal frame work of the Nigerian Criminal Justice System, the process from pre-arrest, interrogation, trial and sentencing, it is apparent that the state of the Nigerian procedural and substantive laws on the subject is quite distant from a fair and transparent one. Ranging from the wide power of arrest conferred upon the police, lack of safeguard against manhandling and torture at interrogation stage, lack of proper safeguard against bias on identification parade ground and the way confessional statement is obtained, including the secrecy with which the State treats her proof of evidence up to the poor provision for legal representation in matters that carry death sentence, they are suggestive of disregard for the cause of justice in a so-called democracy.

More abysmal is the mandatory death sentence which shuts out the trial Judges from considering all other factors that should determine the particular mode of punishment that could appropriately meet the justice of a particular case, knowing fully well that although an accused may be culpable in the particular circumstance of a case, he may not deserve to die, having regards to the special circumstances of the case. Looking at what obtains in other jurisdictions that still believe in capital punishment, calls for an urgent need to reappraise the position of Nigerian laws with a view to improving on the capital crime regime. While it may appear difficult and seemingly off-beat to single out capital crimes for reform, it is however humbly submitted that having regards to the extremities and irreversibility of capital punishment, it is not wholly inappropriate to demarcate between the trial and sentencing of capital crimes and other crimes.

In the last two decades in Nigeria, the hallmark of argument against death penalty has been predicated on the likelihood of execution of the innocent owing to alleged inaccuracy of the Nigerian criminal justice system and lack of a reliable statistical data of its deterrent effect. The resulting unease has generated a lot of arguments and counter arguments not only amongst the academics and death penalty opponents but also by many other actors in the system[1].

But as earlier submitted, if historians of science can show that every scientific theory of the last two millennia has proved to be wrong in some aspects, then one has no reason to abandon the current mode of criminal justice system in Nigeria because the system sometimes leads to inaccurate results[2]. All the same, the rate at which subsequent events prove innocence

[1] A.A. Adeyemi "Death penalty: Criminological Perspective: The Nigerian Situation" Revue Internationale de Droit penal vol. 58 nos. 3&4 91987) at pp. 489-494 See also (a) Lillquist, E; "Recasting Reasonable Doubt: Decision Theory and the virtues of Variablity", 36 U.C in E. Lillquist, "Improving Accuracy in criminal cases" University of Richmond Law Review Vol. 41:897 and (b) I. Okagbue "The Death Penalty As An Effective Deterrent To Drug Abuse And Trafficking: Myth or Reality?" 1st Ed(Nigeria Institute of Advanced Legal Studies. 1991) p.13.

[2] Lillquist; op. cit at 162-163.

of convicted persons in the technologically advanced world today giving some uncomfortably chronic reason for public ambivalence about capital punishment that Nigeria cannot afford to pretend that the state of her statutes does not require a rethink; if this form of punishment must be retained[3].

Giving the ironic status of death penalty provisions, the Criminal and Penal Codes definitions of capital offenses and the purpose of punishment and the tide of change throughout the developed world and a lot of the developing world on death penalty and its wisdom, the death penalty provisions of various Statutes in Nigeria along with the procedural rules thereon no doubt, require redrafting. Failure to decide a clear philosophy and grounds of imposition of death sentence would leave Nigeria's sentencing system isolated from the tide of change that has taken place in many countries of the world[4].

However, having regards to the peculiarities of Nigeria's socio-political and religious problems, it appears that setting up a package of crime-control policy that does not include capital punishment might well seem, at least *prima facie,* to be both violating the rights and reducing the welfare of its citizens just as would, a State that failed to enact simple environmental measures to save a great many lives[5]. Government cannot but act in ways that affect the actions of citizens, therefore, where citizens decide whether or not to kill each other in the light of government policies, it will amount to an abdication of its duty, if government fails to take appropriate action against one who adopts an extreme measure in unlawfully exterminating the life of an innocent citizen; after all, unjustified killing is what capital punishment seeks to prevent.[6]

Ironically, even the most vehement opponents of death penalty concede that there is no equally pleasing and acceptable alternative punishment to heinous crimes that attract capital punishment[7]. In the circumstance, it is humbly submitted that what Nigeria requires now is not throwing away the baby with the bath water but a conscious effort to improve the existing legal framework towards ensuring a more efficient, efficacious and accurate capital punishment regime. Towards this end, it will be rewarding to think of' a framework that will include the following;

**Harmonization of existing capital laws**

There is the need to re-appraise and harmonize all existing laws prescribing capital punishment with a view to limiting capital punishment to cases, only where death actually

[3] As Professor Donald Dripps noted recently, 25% of the conclusive DNA tests performed at the request of the police in the United States of America exonerated the suspects and there is therefore no reason to suppose that the processes of police investigation such as misidentification, informant perjury and poor defense work along with proscutorial misconduct and poor defense work where DNA techniques cannot be employed, do not result in improper conviction after all. See Lillquist, Op. cit, at P. 898.

[4] E. Zimiring "The Unexamined Death Penalty: Capital Punishment and Reform of the the Model Penal Code" Columbia Law Review vo. 105 N.4 (May 2005) pp. 1396 at 1398.

[5] C.R. Sunstein and A. Vermeule, "Is Capital Punishment Required? The Relevance of Life-Life Tradeoff" Univerisyt of Chicago Law School Research paper No. 85 (2005). P.1&44

[6] Ibid at 44

[7] D.S. Sidhua, "Death as punishment: An Analysis of Eight Arguments Against Capital Punishment "www.http://SSRN.com/abstract/1123831

occurs in the prosecution of the crime.[8] Additionally, death sentences should cease to be mandatory so that the presiding Judge is empowered to consider antecedents of the case and the convict and the general circumstances of each case, to determine if death sentence is appropriate in the particular case.

**Identification Parade**

One area opponents of death penalty often rely upon is error arising from improper line-up and identification of accused person[9]. It is in this light that it is suggested that the line - up or photo-array be "double blinded" in the sense that the administrator should equally be unaware of who the initial investigation points at, to avoid acts that may unconsciously give out such suspect to the identifier or eye-witness. Equally, the suspect which the police have eyes upon should not just be sandwiched between few people but many people that bear some semblance with the perpetrator so that the identification may bear more accuracy. Along this, the witness should be instructed that the culprit may not be within the parade, thus disabusing his mind from identifying someone by all means.

**Recorded Statement** of **the Accused**

This proposal requires that police interrogation of witnesses and the accused should he recorded either on video or audio-tapes. With cell phones, video and audio-tapes today, logistic problems that may arise from this requirement is minimized[10]. Notwithstanding corrupt tendency of the police to manipulate the recording after torturing the accused, it is submitted, all the same, that a video tape made probably with a relation or legal representative of the accused in attendance, at least, has the advantage of capturing events close in time to when the police and the witnesses first came into contact, thus providing a record that is at least somewhat more difficult to distort than a police officer's statement about the alleged confession of the accused person".[11] While it is conceded that certain confessions may he made in casual conversation or circumstances that may not augur well for recording but it is submitted all the same, that allowance could be made for confession made in such circumstance.

**Pre- Trial Discoveries:**

This requirement demands more detailed information than normal proof of evidence as is the present practice in the High Court. This does not mean a full scale discovery but a liberal open-file system.[12] Increasing amount of information available to either side, prior to trial is

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[8] Similar to the procedure adopted in North Carolina in its Criminal Procedure Act. Ch 15A. article 92 section 1 in Lillquist, Op.cit at p.906 and section 1 (2) (a), Kidnapping (prohibition) Law of Rivers State, 2009.

[9] B. Scheck etal; "Actual Innocence: When Justice Goes Wrong and How to Make it Right" p. 165 – 166 (3rd ed. 2003) in Lillquist, "Improving Accuracy in Criminal Cases", Op. cit, p.917.

[10] Ibid at PP. 920 parag. 2 and 3 and 924

[11] Ibid at p. 918 parag. 2.

[12] Brady v. Maryland 373 U.S 83 (1963) Where it was held that pre-trail information that is favourable to the defense and material on guilt or punishment perfectly align with accuracy interest. See also Ilo, J; coordinator of Amnesty International in his report presented at the first International conference on the Application of the Death penalty in Common Wealth Africa held in Entebe, Uganda from 10-11th May, 2004 where he bemoaned rehichtance if the prosecution to share information with defence lawyers and in some cases, suppression of indormation favourable to the accused.

likely to increase the accuracy of capital trial[13] but not as far as it challenges the accused person's constitutional right to remain silent[14] except that it may be in his interest to trade in information if he knows he is actually innocent.

In as much as this procedure may over expose the case of the prosecution to the accused but it is submitted that no price must be seen as too high for the State to pay, to ensure transparency and accuracy of capital cases[15]. The State is only being made to pay extra price to suit its conscience that if and when it decides to execute one of its own, the decision is well deserved[16]. In any case, the State had such access during interrogation by the police so that such State disclosure would only even up the accused person's right against State, which has all investigative powers to compel witnesses, including witnesses of the accused, to access pretrial information through the police.[17]

**Standard of Proof**

Some have argued for the need to increase standard of proof required to secure conviction but going beyond the level of evidential practices as it in Nigeria today may make it almost impossible to convict, especially if it is generalized.[18] On the other hand, if the standard is limited to certain issues, say expert evidence by prosecution, this will undoubtedly make it harder to erroneously convict only those accused persons against whom expert testimony is sought, giving no advantage to those where no expert evidence is led, by the prosecution.

**Pre-Sentence Investigation**

Barring some lame-duck misconception of the essence of *allocutus* under the Nigerian Criminal Procedure Codes, once an accused person is convicted, the court proceeds to impose sentences, putting into consideration some possible aggravating and mitigating factors.[19] All the same, this has always included pre-sentence investigation and pre-sentence report as obtains in some other jurisdictions[20]. This position holds despite recent direction suggesting otherwise.

In the pre-sentence investigation Rules of the United States of America, Court's sentence is dependent upon the investigation report filed by the Probation Officer who is required to interview the convict and his Attorney. His report should identify all applicable guidelines and policy statement of the sentencing commission, the accused person's criminal history, available kind of sentence for the offence, including factors relevant to appropriate sentence and any basis for departing from such sentencing range, based on the social, psychological and medical

[13] Section 36 (II) of The Constitution of the Federal Republic of Nigeria. 1999. See also Sugh v The State (1988) 3 NWLR 475. The Administration of Criminal Justice Act, 2015 requires further improvement in this direction.
[14] ibid
[15] But in New Jersey, which generally provides for open discovery, the accused is obligated to turn over discovery unless he affirmatively opts out-See N.J.R. CT. 3:13-3 (b) in Lillquist Op. cit at p.912. See also California Penal Code paragraph 10543 which mandates discovery even if the accused does not ask for it as in California's Penal Code.
[16] Lillquist, Op. cit p. 913
[17] Ibid, P. 914
[18] L. Larry, Truth, Error, and Criminal Law 127 (2006) in E. Lillquist, "Improving Accuracy in Criminal Cases" University of Richmond Law Review; vol. 41:897, p: 897 at 904.
[19] Section, 221 of the Criminal Code. And sections 270 and 273 of the Criminal Procedure Code.
[20] As obtains under the American Laws.

status of the accused; and all such information as may be relevant to the particular offence for which the accused stands convicted.[21]

The closest process to pr-sentence investigation under the Nigerian Criminal Procedure Rules is the *allocates,* usually, a representation made by or on behalf of the convict for possible mitigation of sentence on the floor of the Court.[22] In a capital trial, it is humbly submitted that the need to conduct pre-sentence investigation cannot he over-stretched[23]. But such investigation report will only amount to a mockery of the entire process unless the present state of the law that removes all discretion in capital sentencing from the judge is reviewed.[24]
It is humbly submitted that neither what looks like improvement by the Criminal Justice Allocation Act of 2015 nor the power of recommendation of a trial judge for pardon or commutation does not go far enough, more so, that such recommendation is not binding on the Executive[25]

**Double Strike Option**

Closely following the pre-sentence investigation is the double-strike option, which is to be the Nigerian version of the 'three-strikes' provision under the penal rules of some other jurisdictions[26]. Under the Californian penal code, a "strike" is a conviction for a serious or violent felony like murder, rape, robbery, attempted murder, assault with intent to rape or rob, kidnapping, burglary of occupied dwelling place, armed robbery, drug sales to minors and a host of others. A criminal with one strike who is convicted of a subsequent felony automatically faces double the length of a normal sentence of a first offender while a two strikes must spend at least 80% of his sentence before possible release[27]. According to the Attorney General of California, four years after this law, some 4,000 fewer murders were recorded.[28]

While adoption of the double strike rule may not be wholly suitable for all crimes in Nigeria. it is humbly submitted that its adoption, with some modifications, into the Nigerian legal frame work for capital cases alone may go a long way in curbing violent crimes, resulting in death. In the Nigerian package, death sentence should be imposed only in crimes where death occurs and where the convict is shown to have been convicted for one instance of capital offence previously. This will not only deter capital offenders but also justify execution of a second time convict, even by abolitionists and exhibiting Nigeria's transparency before the International community.

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[21] Rule 32 (c) of the American Federal Rules of Criminal procedure
[22] A.O. Alubo "Pre-Sentence Investigation and Report. A Desiderate for Nigerian Criminal Procedure law" (Ed) Angwe B.R etal, Milestones in Nigerian law; Legal Essays in Honour of Dr. (Alhaji) Abdullahi Adamu (Oracle Business Ltd, 2007) 257. See also A.O. Onadeko The Nigerian Criminal Trial Procedure (Lannon Nigeria Limited) 334.
[23] In a recent unreported case of ogiri and anor v. the State FCAK/2/78 the court of Appeal attempted what looks like a trials where imposition of death sentence is automatic upon conviction.
[24] Section 221 of the Penal Code and Section 319 of the Criminal Code, for example
[25] L.E. Anyia, "The Rights of a Convict under the Nigerian Criminal Justice System" The Advocate, a Journal of Contemporary Legal Issues, Unijos Students Law Journal vol. 5 (Nov. 2000) p.60.
[26] Califonia Penal Code, March 1994
[27] E. Helland and A. Tabarrock, "Does Three Strikes Deter" A Non-Parametric Estimation", E. 500 9th St. Claremont, C.A. 91711. Eric. Helland@claremontmeKenna.edm.
[28] Ibid at 722

**Double Strike Alternative**

As an alternative to the 'double strike' measure, a more straight forward measure should be introduced into Nigeria's legal framework so that when an accused person is found guilty for any capital offence, he should not be sentenced to death where the trial judge finds any of the following extenuating circumstances: -

1. That no aggravating circumstances enumerated hereunder was established by the evidence at the trial or will be established if further proceedings are initiated for any reason; or
2. Substantial mitigating circumstances established by the evidence at the trial, call for leniency; or
3. That the court was satisfied that the accused was remorseful and still pleaded guilty despite his counsel's guidance to the contrary and the court's entry of plea of "not guilty" on his behalf; or
4. That the convict was under 18 years of age at the time the offence was committed; or that the convict was pregnant at the time of conviction; or
5. That the convict's physical or mental condition calls for leniency; or
6. That although evidence on record suffices to sustain the verdict but the quality of counsel representation for the defence and all the circumstances of the case do not foreclose all *doubt* regarding the convict's guilt.

In this behalf, aggravating circumstances under which death sentence may be imposed are:

i. Where the murder was committed by a convict under earlier sentence of imprisonment for murder or previously convicted of another murder or of a felony involving the use or threat of violence, reminiscent of the requirements under the "double strike" option.
ii. That in the process of the murder for which he was convicted, he had knowingly created a great risk of death to such large number of persons in the society, and there is reason to believe that he would perpetrate such calibrated danger if he had another opportunity.
iii. That the murder was committed for pecuniary gains in pursuit of terrorist plans or organization.
iv. That the murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

**Innocence Review Commission**

The role of this Commission is to take a second look at the evidence against a convict, based on additional information, if any, with a view to investigating the factual innocence of a protesting convict without considering procedural errors of the Trial and Appellate Courts. Where the Commission determines that there is sufficient factual innocence to merit judicial review, the Commission should remit the case back to the Court of Appeal or the Appeal Court in which the case was last heard for reassessment[29]. Under such a circumstance, the Appeal Court is to be empowered to either reverse the conviction or order a new trial in the case where evidence was legally sufficient but the guilty verdict was found to be "unsafe and

[29] Similar to the procedure adopted in North Carolina in its Criminal Procedure Act. Ch 15A. Article 92 section 1 in Lillquist, op. cit at p. 906.

unsatisfactory"[30]. To avoid one way justice, similar privilege should be granted to the prosecution to ventilate their claim against wrongful acquittal.

In Nigeria, adoption of such a procedure requires Constitutional amendment to alter "initial finality" of the Supreme Court in Capital cases. Difficult as that option may be, it is humbly submitted that if that is what must be resorted to, to ensure transparency of Nigeria's capital justice system, then it is worth the effort. To avoid triviality, in both North Carolina and under the English laws jurisdictions, a high burden is placed upon the convict to demonstrate his innocence to the Commission Panel, which must be convinced unanimously "by clear and convincing evidence" of the convict's innocence and that it was "unsafe" to convict him in the first place.[31]Although this has been argued as amounting to double jeopardy for the convict but it is submitted that it is an extra mile the convict should be willing to go because his life is on the line. In any case, the main fear is where and how such body of injury could be harnessed in an unpredictably corrupt country where some individuals could bribe or take bribe to cross from hell to heaven.

**Life prison alternative**

The often canvassed alternative to death penalty is life prison sentence, with or without parole. It is without parole where the door of possible release is shut against the convict no matter how repentant he turns out in the course of his prison term, except for certain special circumstance. Under such a circumstance, all things beings equal, a convict is expected to die, either naturally or otherwise, in prison for retributive, incapacitive or deterrent purpose, for all that the system is worth.

While this alternative sounds attractive to the abolitionist or the conservative far right Utilitarian, at least because the convict is saved from the hangman's costumes, its justice and practical workability in a poverty ridden and corrupt country like Nigeria remains to be seen. It must not be forgotten too quickly that factors that necessitate some of the abolitionist countries into abandoning capital punishment for life sentence-alternative do not necessarily obtain in Nigeria. While Nigeria is still struggling to contain the scourge of poverty, corruption, kidnapping and killer diseases, some of the abolitionist countries have since developed beyond such basic level, either on their own or by the help of some other developed countries, into fine- tuning their so called human rights and other democratic principles.

In a country like Nigeria where great majority have almost become scavengers for survival; where public school system has failed; where even Federal roads have become death traps; where the commonest drugs are out of stock in public hospitals and where violent crime has become a routine owing to unemployment and loss of moral or ethical values, it is humbly submitted that it will amount to an affront to common sense to apply whatever Public Office Holders deem fit to leave in the public coffer to the dual role of improving the law enforcement agencies like the Police and the Army, to fight these criminals and equally expend such resources to fend for convicts that have been adjudged unfit to live amongst straight thinking humans at the expense of the tax payers. It is further humbly submitted that, there being no convincing data to show that it costs more to execute than keep and maintain a convicts in prison, a life prison alternative may amount to such expensive opportunity-cost for a country

[30] Similar to the approach under English law as revealed by Lillquist, Ibid at p. 904.
[31] Ibid, P.908

whose main income is corruptly diverted to personal pockets at the expense of the common man, who is also the most vulnerable in the hands of these criminals.

World over, the recent trend is that the prison is fast losing its crime-control capacity and Nigeria cannot be an exception. In America for example, research has shown that barely a decade ago, incarceration was driving up crime rates by at least 7% and was preventing as little as 13% would be crime rate, but given the recent trend, it is apparent that today's prison set-up causes a net-increase in crime.[32] The question then is how to unravel the crime-causing or criminogenic impact of incarceration on the rate of crime-growth thus accounting for submission that until this puzzle is unraveled and properly addressed, it will he improper for Nigeria to ditch its present, better known system for an uncertain alternative like life sentence, with or without parole. It is disturbing to note that according to the Nigerian prison report, 1939, some criminals "prefer prison with its lack of freedom but sure food and lodging, to freedom with little or nothing to eat and no place to sleep[33]. It is humbly submitted that today's rate of recidivism is not any better than the status reflected in the 1939 report. Thus raising doubt on the reliability of the main philosophy behind imprisonment in Nigeria[34].

Closely related to this is the fact of corruption which is humbly submitted, will constitute the greatest threat to life prison alternative. In the circumstance where most culprits of robbery, kidnapping and political assassination double as political thugs for some influential political figures, the possibility of influencing instant release of such dangerous criminals from prison prematurely, cannot he ruled out. Added to this is the threat the dangerous capital convicts will pose to other inmates and possibility of escape from prison to do greater harm because of the porous nature of' Nigerian prisons. Therefore, the bottom line is that life prison is not a good enough alternative to death penalty, at least for now. At the height of the heat of kidnapping and other violent crimes in Nigeria in 2021, the Nigerian President directed that law enforcement agents should shoot at holders of AK-Riffle at sight since they become elusive to the course of justice. Even when various International Human Rights organizations frown at such measure for the risk of killing the innocent such some measure seems to be yielding result, at least in restoring confidence of the society on the Nigerian government and the system. Nigeria now seems to believe that it is more beneficial to secure human rights of the larger public than the very few who constitute themselves into threat to the basis of social contract that informed the Nigerian State.

**Lagos State Example**

No matter the kind of proposal, it is not possible to eliminate error totally except to suggest that conviction be eliminated altogether, which will not constitute legitimate solution because, society recognizes that one important function of the criminal justice system is to convict those who are actually guilty upon the plain facts of the case before the Court. What constitutes improvement is not total elimination of conviction but moving away from a system

[32] M.H. Pritikin "Is Prison Increasing Crime" Wisconsin Law Review, 2008: 1049

[33] Report on prisons, 1939, para 3 in A. Ogunleye, The Nigerian Prison System (Specific Computers Publishers, 2007) 106 & 110.

[34] F.O. Okediji and O.O. Odedeji "The Sociological Aspects of Prison Re-Organization in Nigeria" (Ed.) T.O. Elias The Prison System in Nigeria (National Conference on the Prison System, July, 1-5, 1968) (Lagos University Press) 90. See also A.A. Adeyemi "Sentences of Imprisonment: objectives, trends and Efficacy" (Ed.) Elias T.O.; Ibid p. 243.

that randomly decides whether the accused *is* guilty or innocent, to a system based on evidence that proves the guilt or innocence of the accused.

To be safe, it is better not to over concentrate on improving the trial process, to avoid wrongful conviction alone but how to ensure accuracy of Nigeria's criminal justice system altogether, with a view to balancing justice of wrongful conviction and wrongful acquittals. It is this vision that led the Lagos State House of Assembly into enacting the State's *Administration of Criminal Justice Law,* in May 2007[35].

The high points of this law which are of interest to capital crime trial include its provision regarding plea bargain[36]plea and sentence agreement;[37] express exclusion of pregnant women and persons under 18 years of age, including persons of unsound mind from death penalty";[38] pardon;[39] proof of evidence;[40] probation orders;[41] and bail[42]. The novelties particularly, are the provisions for plea bargain, plea and sentence agreement; and probation orders. While section 15(1) attempted to relax the tight position of the previous code against trial for those charged for capital offences, section 268(4) further relaxed the position by empowering the magistrate holding charge to "grant bail to any person brought before him pursuant to subsection (I) of this section, pending arraignment of such person before the appropriate court or tribunal". To expedite action on the processes, subsection (5) specifically provides that:

> *An order of remand made pursuant to sub- section (1) of this section shall not exceed a period of thirty (30) days in the first instance and the Magistrate shall order the release of the person remanded unless good cause is shown why there should be a further remand order for a period not exceeding one month.*

Subsections 6, 7 and 8 place exclusive burden on the prosecution to satisfy the Magistrate with good cause why further order of remand should be made. Although section 264 (2) confers on the accused person right to object to insufficiency of proof of evidence attached to the Information, the said right has been limited to after the close of the case for the prosecution without any visible reason. But it is humbly submitted, not only that the plea bargain provision under section 75 is rather too wide and creating possible conflict with other Federal laws but that the provisions of section 76 on plea and sentence agreement seems to delve so much into the realm of civil law for comfort. In an impoverished country like Nigeria, the rich and high ups of the society will likely over reach this provision to secure cheap exit from proper purpose of punishment.

While this law falls short of providing for parole but it provides for conditional release and probation orders although, for non-indictable offences only.[43] Instead, sections 308 to 314 make provision for pardon whose provisions are a far cry from those of parole, modeled to

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[35] A Law on Criminal Justice Administration in The High Courts and Magistrates Courts of Lagos State and for other Connected Purposes. Laws of Lagos State No. 10 of 2007
[36] Ibid; s. 75
[37] Ibid; 76
[38] Ibid; Ss. 217-229 and 305-315
[39] Ibid; S.. 308-314
[40] Ibid; S. 245-249
[41] Ibid; S.245-249
[42] Ibid; S. 115 (1)
[43] Ibid; sections 245-249

encourage convicts to change for the better, beginning from the prison. Incidentally, either by oversight or by design, the law avoided such hot and slippery spots like identification parade, pretrial discoveries, pre-sentence investigation, review commission and other issues considered as lubricants to the harshness of capital trials and sentence. Unfortunately, the Federal version of this law has not gone far enough to improve on lapses in the State version.

By and large, although this law has been vehemently criticized as too limited to be taken seriously, it is humbly submitted that its bold departure from traditional provisions of its predecessor codes must be commended. It is equally humbly submitted that this pioneer effort sufficiently points Nigeria to the need for a more comprehensive overhaul of the existing capital crimes statutes, the procedural rules and the entire criminal justice system in Nigeria, beyond provisions of the Administration of Criminal Justice Act, 2015.

**Resolving Conflict with the Sharia System**

Having regards to the age of the Penal Code and the Criminal Code, it is apparent that the codes call for revisit with a view to refashioning the basis on which some of the issues were criminalized and to revalidate their status in the contemporary Nigerian society.[44] The recent clamor for and introduction of the Sharia Criminal justice system in some Northern States of Nigeria is a pointer to the fact that the people's moral, social, political and religious values, either imaginary or real, are fast changing from what they were at the time the present criminal codes and statutes were fashioned and enacted.[45] The recent enactment of the Law on Criminal Justice Administration by the Lagos State House of Assembly to replace the criminal procedure law of Lagos State and the Federal version of it speak volumes in this regard[46].

Value is never static but evolving. As the society evolves and changes, so are its values[47] Islamic law plays a central role in all Islamic culture. In Nigeria, the structure of Islamic law was for a long time that of civil rather than common law until it evolved its own system of criminal law recently because, according to Anderson, the Sharia is undergoing revision in the Arab and all Muslim world and Nigerian Muslims cannot operate in isolation[48]. Religion has always been described as opium of the masses either rightly or wrongly, but its bandwagon effect cannot be under-estimated, especially with Islam whose volatility has been overwhelming, the world over.[49]

The Federal Government failed to properly decode the basis for the clamor to enlarge the province of Islamic Law in Nigeria and thus abdicated in its role, leaving the States to mismanage the situation, sentimentally to the detriment of the sanctity of the Nigerian judicial order as entrenched under the Constitution. Consequently, the province of capital crimes under the reintroduced sharia codes in most Northern States today far exceed those under Nigerian

[44] The Criminal Code and Penal Code first enacted during colonial era.

[45] The clamour for reviewed status of Sharia Law in Nigeria to include a range of criminal offences, including capital offences began in Zamfara State in 1999.

[46] Law no. 10 of Lagos State 2007, op. cit

[47] W. Bowers, "Capital Punishment and Contemporary Values: People's Misgivings and the Court's Misconception" American Journal of Law and Society Review, vol. No. 1 (1993).

[48] N. Anderson, On Religions, in Mc Dowells and J, Gilchrist, The Islamic Debate (San Bernadido, Califonia, Here's life Publishers, Inc. 1983) pp. 18-21

[49] Abdal al/Masih, K.O and Ibn-Salam M.J; What you have not Heard About the Sharia Question (JPC), Inc. 200) pp. 9-13 & 40-50 See also Schacht, J; An Introduction to Islamic Law (Oxford, Clarendon Press, 1984) pp. 69-86.

conventional criminal statutes[50]. And all these, before courts manned by untrained hands to enforce inelegantly enacted laws prescribing death sentence[51]. This situation no doubt strengthens the misgiving of the International community that Nigeria has diminished respect for human life and human rights.

Despite this unfortunate development, it is disturbing that many Nigerian scholars with Islamic bias import sentiment in defence of over-extension of the Sharia Criminal justice system without proffering any useful suggestions on how to resolve the Constitutional, social and religious log jam created by this mindless situation[52]. History of Islam in Nigeria is replete with all forms of vo1atlity and may amount to mindless venture to confront the Sharia system in Nigeria today head-on. In this regard therefore, it is humbly submitted that having regards to the complications and political implication, some compromise must be sought to accommodate the sharia criminal provisions, excluding capital punishment; or subject to such capital cases being tried only by specially trained sharia judges[53] in accordance with Nigeria's legal standard; guided by all procedural laws in that behalf.

Such exercise, it is humbly submitted, is both necessary and practical as part of a larger criminal justice reform project, to enable Nigeria takes a more principled position on its capital cases.[54] To ignore this call, it is submitted, is to ignore the most visible and troubling challenge to the legitimacy of the Criminal Code, Penal Code and all other conventional criminal Statutes, including the entire criminal justice system in Nigeria.

**Conclusion and Recommendation**

This paper on the need to fashion a more appropriate legal framework for improved capital crimes trial and sentencing interrogated the lapses identifiable in the current crimes despite effort to improve on the system in recent times through passage of State and Federal Legislation in that behalf. The paper found that neither the Lagos State Administration of Criminal Justice Law nor its Federal Counterpart have gone far enough to evolve a more transparent capital crime trial and sentencing regime. The paper thus recommends as follows:-

a. That the Nigerian Law Reform Commission and Legislature should be more proactive in evolving a more practical but transparent legal framework in the Nigerian Capital Crimes trial and sentencing.
b. That if Nigeria chooses to continue to adhere to death penalty, it must leave no stone unturned to ensure a more transparent capital crime trial to represent Nigeria to the International Community as a nation that shows respect for a human life.

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[50] Offences like rape, sodomy, adultery, incest, witcraft and possession of criminal charms, which carry lesser punishment under Nigeria's conventional Criminal & Penal Codes carry death penalty in some aggravated circumstances under the Sharia Law.

[51] P. Rudd, Islamic law in Nigeria (Spectrum Books Limited, 2003) pp. 14-15.

[52] I.H. Chiroma "Punishment For The offence of Zina (adultery) Under the Sharia and Nigerian Criminal law: A Comparative Analysis" The Social Analyst, A Journal of the Nigerian Sociology and Anthropology Students Association, Benue State University. Vol. 4 No. 1 (Aug. 2005) P. 154. See also Ostien, P; "Ten Good Things About the Implication of Shaira Teking Place in Some States of Northern Nigeria" Current Jos Law Journal (2003) vol. 6. No. 6 at p. 134 118. See also P. Rudd, op. cit at pp. 16, 26, 38-42.

[53] Rudd, Ibid at pp. 14-15

[54] F.E. Zimring "The Unexamined Death Penalty: Capital Punishment and Reform of the Model Penal Code" Columbia Law Review, vol. 105, no 4 (May, 2005) pp. 1396-1416.

c. That political actors and policy makers should exhibit greater political will and fortitude to clearly break away from her conservative approach to the issue of death penalty to a more result-oriented approach that social challenge of the twenty first century deserve.

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