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OFFENCES CARRYING DEATH PENALTY IN NIGERIA AND METHODS OF EXECUTION

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ABSTRACT

This paper discusses various offences punishable with death in Nigeria and the main methods of execution respectively. It examines these offences under Nigeria's general criminal law principally in the criminal Code and the Sharia Penal Code. It commences with the offence of murder or culpable homicide punishable with death, treason, treachery, participating in a trial by ordeal resulting to death, instigating invasion of Nigeria, Hirabah (Brigandage or highway armed robbery, Zina (adultery or fornication, sodomy (Liwat), Baghe (rebellion or treason) to mention a few out of a long list of others. It also discusses three major methods of execution in Nigeria which include – firing squad, hanging and stoning, strengthening the discussion with relevant judicial authorities where apposite. It concludes that the most recent argument is that death penalty is a threat to the right to life, hence global trends now favour the punishment theories of reformation and rehabilitation and that Nigeria should join the band wagon and toe the trend pursuant to the concrete, cogent-compelling and convincing reasons advanced against death penalty.

Keywords: Capital Punishment, Homicide, Treason, Law, Human Rights.

1. INTRODUCTION

Punishment varies in intensity, mode, style and extent. What determines the type of punishment depends on the nature of the particular crime and the criminal, the status of the victim and the extent of his victimization and the feeling of the society towards the crime committed.[1] These factors are relevant, more often than not, in combination, rather than in exclusive isolation of one another.[2] Most statute books, the researcher submits, provide punishments for criminals ranging from death penalty,[3]through imprisonment, fine and suspended sentence to cite a few out of a long list of others, though the latter is not currently implemented in Nigeria but popular in advanced countries like the United Kingdom and United States of America respectively.[4]

[1] Dambazau, A.B., Law and Criminality in Nigeria: An Analytical Discourse, (Ibadan: University Press Plc, 1994) p. 108.
[2] Ibid, at p. 109
[3] See S. 319, Criminal Code Cap C38 and 221 Penal Code Cap P3 LFN, 2004 Respectively.
[4] Malemi, E.O. the Nigerian Legal system, Text and Cases, (Lagos: Princeton Publishing co., 1999) p. 402

2. OFFENCES PUNISHABLE WITH DEATH

The British had introduced the Criminal[5] and Penal Codes[6] respectively both of which are based upon common law principles and both of which contain a number of capital crimes. Under the Criminal Code, for example, murder (Criminal Code), or culpable homicide punishable with death (Penal Code), treachery, treason (including instigating the invasion of Nigeria) and participating in a trial by ordeal resulting in death all attract capital punishment.[7] In addition, the Penal Code includes three (3) other capital offences, viz: giving false evidence in a trial which leads to the execution of an innocent person, abetting the suicide of a minor, a mentally abnormal or drunken person and in the case of a person already serving a life sentence, attempting to commit culpable homicide.[8] The chronological examination of the offences cited above shall commence with murder or culpable homicide punishable with death.

2.1 Murder Or Culpable Homicide Punishable With Death

Section 319(1)[9] provides inter alia that: "Subject to the provisions of this section, any person who commits the offence of murder shall be sentenced to death. Pursuant to section 319(2) and (3) of the same law, an offender who has not attained the age of 17 years and a pregnant woman who has been found guilty of murder shall not be sentenced to death." While section 221 of the Penal Code[10] provides inter alia that: "Except in the circumstances mentioned in section 222, culpable homicide shall be punished with death –

(a) If the act by which the death is caused is done with the intention of causing death; or
(b) If the doer of the act knows or had reason to know that death will be the probable and not only likely consequence of the act or any bodily injury which the act was intended to cause."

It is submitted that whether death was the probable or only a likely consequence of an act or of any bodily injury, is a question of fact, it is noteworthy that Nigeria courts sentence criminals to death after the due process under the provisions of the aforementioned sections of the law, every now and then, thereby leading to too many decided cases not possible to be mentioned here. Recently, a Lagos High Court sentenced a police officer, Nwabueze, 35, to death for killing a baby at a checkpoint.[11] Nwabueze was accused of killing Kafusara Muritala in April, 2009 at Mr. Briggs Junction, Alapere, Ketu area of Lagos State, when he opened fire on a car the little girl and her parents were travelling in. Delivering her judgment, Justice Olabisi akinlade stated that she found the ex-corporal guilty of the murder and therefore sentenced him to death by handing. She said: "By his training as a police officer, he (Nwabueze) cannot claim ignorant of the probable consequences of shooting at the vehicle. If indeed he shot the car in the rear, the bullet would not have hit the occupants of the car. I therefore hold that the accused had the intention to kill or cause bodily harm to the occupants of the car. I found the accused guilty as charged."

The case of Nwabueze is just one of the uncountable examples of the extra-judicial killings by some of the trigger happy members of the Nigeria Police Force on our roads either due to lack of adequate training in firearms or for their selfish interest. The rank and file of

[5] Cap C38 LFB, 2004
[6] Cap P3 LFD 2004
[7] See Ss. 319(a) Criminal Code, 221 and Penal Code 37 and 208 of the Criminal Code respectively.
[8] See sections 159(2), 227 and 229(2) respectively of the Penal Code.
[9] Criminal Code Cap. C38 LFN, 2004
[10] Cap. P3 LFN, 2004
[11] Akeeb, a., "Court sentences policeman to Death for Killing Baby at Checkpoint", Daily sun, September, 28 2012, p. 6.

the Nigeria Police therefore need to be properly trained and retrained in the handling of firearms in order to checkmate the rampant incidence of extra-judicial killings by security operatives in Nigeria.

2.2 Treason

Section 37 of the Criminal Code[12] as well as section 411 of the Penal Code[13] are of the effect that any person who levies war against the state in order to intimidate or overawe the president or the governor of a state, is guilty of treason and is liable to punishment of death. Treason, the research maintains is one of the most serious offences under the Nigerian criminal justice system, hence it carries the stiff punishment of death penalty. The gist of the offence as contemplated by section 37 of the Criminal Code is the levying of war against the state in order to intimidate or overawe the president or the governor of a state.

Under section 37(2) of the Criminal Code, it is a separate offence to conspire to levy war against the President or the governor of a State. Equally, any person who instigates any foreigner to invade Nigeria with an armed force is guilty of treason under section 38 of the Criminal Code.[14] Under the Penal Code Law,[15] "whoever levies war against the sovereign in order to intimidate or overawe the Governor-General (sic) the President is said to commit treasons". It will appear from the provisions of the Penal code as opposed to the Criminal Code that treason cannot be committed when and if only the governor of a State of the Northern States is the person that is overawed. According to Ocheme,[16] this argument is raised by the fact that the offence under the Penal Code is tagged as a Federal Offence suggesting that it is not an offence against the state in which it applies. He further contended that, this argument may be replied with the opinion that since no one state is independent of the federation, and since the President of the country has the entire nation as his constituency, the act of treason committed against the Governor of a State is as much an act against the Sovereignty of the entire nation. This work aligns with the opinion of the learned author because his argument is sound and not merely academic in context. A vivid example of this was the unsuccessful abduction of ex-Governor Chris Ngige of Anambra State sometime in 2003, by some policemen supposedly acting on the orders of the Inspector General of Police.[17] Although the perpetrators were not charged with treason since the matter was "settled" at the platform of the political party, i.e. the P.D.P., yet it left questions unanswered as regards the crime of treason or treasonable felony against the sovereignty of a State Government as opposed to the Federal Government or the Presidency.[18]

There are a number of sharp distinctions between the Criminal and the Penal Code with respect to this offence. Firstly, under the Penal Code, for the offence of treason attracting the death sentence, there must have been a war levied,[19] or an invasion of Nigeria by an armed force,[20] such that if it was only an attempt or abetment (which can be either by instigation or conspiracy) this would only attract a life imprisonment or any lesser term.[21] These provisions are quite different from those of the Criminal Code where mere conspiracy to levy was is punishable with death as well as instigating foreigners to invade Nigeria with an armed

[12] Cited supra
[13] Supra.
[14] Ocheme, P., The Nigerian Criminal Law, (Kaduna: Liberty Publications Ltd, 2008) p. 355
[15] See S. 410 of the Penal Code
[16] Ocheme, P.,op.cit.n.17 at p. 355
[17] Ibid, at p. 356
[18] Ibid, at p. 357
[19] See S. 410 of the Penal Code.
[20] See further, s. 412© of the Penal Code.
[21] See the provisions of S. 411 of the Penal Code.

force.[22] This distinction it is opined, suggests an unbalanced coverage of the law on a federal offence. For an offence that is supposedly national in its intendment, it appears absurd that laws prescribe different stokes for its occurrence as between the Northern and Southern hemispheres.

From the context of these Codes, Ocheme holds and this work agrees with him that it does appear that those persons acting within the southern part of Nigeria are held with a greater suspicion for having the tendency of treason and treasonable felonies than their Northern counterparts. This assertion according to Ocheme, is borne out of history going by the number of decided cases of treason and treasonable felonies so far conducted during civilian governance in Nigeria. It is however, important to be remembered that during the military era, those who took part in the unsuccessful coup-de-tats that occurred in different parts of Nigeria were tried and executed outside the provisions of these two codes.[23] Few examples are the aborted coup-de-tats of Lt. Colonel Dimka of 13th February, 1976 and that of Major Orkah of 1990 respectively. As members of the Nigerian Armed Forces, they were tried along with other coup plotters by Courts Martial, found guilty and executed by firing squad in accordance with military tradition.[24]

2.3 Treachery

Section 49A(1) of the Criminal Code[25] provides that:

a) If, with intent to help the enemy in any war in which Nigeria may be engaged, any person does, or attempts to do, any act, which is designed or likely to give assistance to the Naval, military or air operations of the enemy to impede such operations of the armed forces of Nigeria, or to endanger life, he shall be guilty of felony and shall on conviction suffer death.

b) No prosecution in respect of ay offence against this section shall be instituted except by or, with the consent of the Attorney General or Solicitor-General of the Federation provided that this subsection shall not prevent the arrest or the issue of the execution of a warrant for the arrest of any person in respect of any offence, or the remanding in custody or on bail, of any person charged with such an offence notwithstanding that the consent of the Attorney-General or solicitor-General of the Federation to the institution of a prosecution for the offence has not been obtained.

Section 49(B)

a) Notwithstanding any rule of law or practice, charges for any offence except treason may be joined with a charge for any offence against the preceding section in the same charge or information, if those charges are founded on the same facts or form, or are a part of a series of offences of the same or a similar character.

b) A person charged with an offence against this chapter (6) who is in Nigeria nay, whether or not the offence was committed in Nigeria or in any Nigerian ship or aircraft, be taken in custody to any place in Nigeria, any person may be proceeded against, charged, tried and punished in any place in Nigeria, as if the offence had been committed in that part of Nigeria, and for all purposes incidental to or consequential in that trial or punishment of the offence it shall be deemed to have been committed in that part of Nigeria.

[22] See Ss. 37(2) and 38 of the Criminal Code.
[23] Ocheme, op. cit., at p. 356
[24] Ibid, at p. 362
[25] Cap C38 LFN, 2004

The research observes that since the inception of the principal penal laws – the Criminal code, the Penal Code and recently the sharia Penal Code, no decided case has been recorded in respect of this offence in Nigeria.

2.4 Participating In A Trial By Ordeal Resulting In Death

Section 208 of the Criminal Code[26]as well as section 214(b) of the Penal code provide for the commission of the offence. Section 208 of the Criminal Code provides:

> Any person who directs or controls or presides at any trial by ordeal which is unlawful is guilty of a felony, and is liable, when the trial which such person directs, controls or presides at results in the death of any party to the proceedings, to the punishment of death, and in every other case to imprisonment for ten years.[27]

In like manner, section 214(b) of the Penal Code provides: Whoever presides or is present at any unlawful trial by ordeal shall be – (b) if such trial results in the death of any party to the proceeding shall be punished with death. By way of explanation the Penal Code states that the trial by any ordeal which h is likely to result in death of any bodily injury to any party to the preceding is unlawful. Like in treachery, the research observes that no decided case has been recorded in respect of this offence in Nigeria.

2.5 Instigating Invasion Of Nigeria

Section 38 of the Criminal code provides that any person who instigates any foreigner to invade Nigeria with an armed force is guilty of treason, and is liable to the punishment of death. Chukkol[28]raised the following question – Is the offence committed once the instigation is provided or must the prosecution prove further that there was an actual invasion as a direct result of such an instigation? He further explained his stand with a hypothetical example – for instance Mr. A may instigate Mr. B, C and D now resident in Cameroon to organize a guerilla force to invade Nigeria. According to him, in such a case, will Mr. A commit treason if the instigation can be provided even if none of those instigated shows up within our borders or is treason committed only after such an invasion? The research associates itself with the learned author because the questions raised by him are so fundamental, moreso, as the offence of treason carries a death penalthy which is irreversible. But kif the above hypothetical example is critically analyzed, it is opined that A, B, C and D could be charged with conspiracy to commit treason in order to serve as general deterrence to would-be offenders. Uptill the time of writing this dissertation, no decided case has been recorded in respect of this offence.

2.6 Abatment Of Suicicde Of A Child Or An Insane Person – Section 227 Of The Penal Code

Section 227 of the Penal Code provides that if an y person under eighteen years of age, any insane person, any delirious person, any idiot or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death. In R v. Nwaoke,[29]the trial judge, applying section 310 of the Criminal Code which expressly

[26]Cap C38 LFN, 2004
[27] Cap P3 LFN, 2004
[28] Chukkol, K.S., The Laws of Crimes (Zaria: Ahmadu Bello University Press Ltd., 2010) P. 414.
[29] (19390 5 WACA 120

provides that a person is deemed to have killed another if by threats or intimidation or by deceit he causes that other person to do an act or make an omission which results in his death found the accused guilty of manslaughter on the following facts. The accused in this case pointed a juju called "Onye nku" at the deceased who owned him some money and said to this effect "since you refuse to pay me, you shall no more eat or drink". He left the juju at the deceased house and although there was no evidence that she stopped eating or drinking, the deceased became very depressed and six days later, she went out and hanged herself on a high tree. The West African Court of appeal, in quashing the conviction , held that it was inconvincible that the action by the appellant could ever result in a person killing himself and more importantly, that there was no evidence that the accused knew that his conduct would be reasonably likely to cause the deceased to commit suicide.[30]The research faults the reasoning of the West African Court of appeal on the ground that in his opinion, the accused created the source of fear for the deceased apprehension and reaction (commission of suicide) by hanging herself on a high tree. In the case of Tonara Bakuri v. the State,[31]Honorable Chief Justice Ademola stated that it is not in every case that the cause of death has to be proved, that death can be inferred from the circumstances of a case. The research aligns itself with the learned Chief Justice and would have expected a similar decision in the case of Nwaoke cited earlier. Other than Nwaoke's case which tends to have partial relationship with section 227 of the Penal Code, the research observes that, there is no direct decided case in Nigeria that has been recorded in respect of the offence of abetment of suicide of a child or an insane person contrary to section 227 of the Penal Code.

2.7 Giving False Evidence To Procure Conviction Of Capital Offence – Section 159(2) Of The Penal Code

Section 159(2) provides that, if an innocent person is convicted and executed in consequence of such false evidence, the person who gave or fabricated such false evidence shall be punished with death. This section is equivalent to sections 194 and 170 of the Pakistan and Sudan Penal Code respectively.[32] Under both the Criminal and Penal Code, this offence is punishable with death in Nigeria. In actual practice, the research observes that, murder and armed robbery are the only crimes in respect of which a death sentence has been passed and carried out under the two codes.

2.8 Attempt To Commit Culpable Homicide – Section 229(2) Of The Penal Code

This section provides that, when any person being under sentence e of imprisonment for life commits an offence under this section, he shall, if hurt is caused, be punished with death. An illustration will be very apposite in this regard, hence there are no decided cases as at the time of writing this dissertation.

(a) Ayo shoots at Bola with intention to kill him, in such circumstances that if death ensured, Ayo would be guilty of culpable homicide punishable with death. Ayo is liable to punishment under this section.[33]

[30] Ibid, at p. 121

[31] (1965) NMLR 163.

[32] See comment, under section 159(2) Penal Code at P. 103 Cap P3 LFN 2004. It is settled law in India, that this section requires that the false evidence be given in proceedings in which it is legally possible for there to be a conviction for a capital offence. Thus, evidence given at a preliminary inquiry or to the Police would not be sufficient to establish an intention or the likely knowledge which must be shown by the accused and which would be established if the false evidence was persisted in the trial stage.

[33] See Illustration (a), section 229(2) Penal Code, Ibid, at p. 158

(b) Ayo intending to kill Bola, buys a gun and loads it. Ayo has not yet committed the offence; Ayo fires the gun at B. He has committed the offence defined in this section.[34]

(c) Ayo, intending to kill Bola by poison, purchases poison and mixes it with food which remains in Ahyo's keeping. Ayo has not yet committed the offence in this section. Aho places the food on Bola's table or delivers it to Bola's servant to place it on Bola's table. Ayo has committed the offence defined in section.[35] The aforementioned illustrations, support the proof of the offence of attempt to commit culpable homicide under section 229(2) of the Penal; code which demands that all the prosecution needs to prove are: that the death of a human being was attempted; that such attempt was the act of the accused and that such act was done with the intention of causing death or that the accused knew, or has reason to know, that death would be the probable cause and not only the likely consequence of the act or of any bodily injury which the act was intended to cause. It should be noted that this is only applicable under the Penal Code.[36]The work observes that no decided case has been recorded in respect of this offence in Nigeria since the inception of the Penal Code.

2.9 Armed Robbery And Firearms (Special Provisions) Decree 1984 Now, Armed Robbery And Firearms (Special Provisions) Act Cap 11 Lfn 2004.

Before the advent of the military in the governance of Nigeria, the offence of robbery which, by its nature, involves either stealing or extortion, was codified under section 401 of the Criminal Code[37]and section 296 of the Penal Code.[38]After the civil war ended in January 1970, a spate of robberies with firearms gripped the country and the then Gowon Administration promulgated a new Decree to deal with the problem. That Decree formed the nucleus as it were, of several other amending Decrees and the current one is the Robbery and Firearms (Special Provisions) Decree (now Act).[39] A common feature of these Decrees is the introduction of death penalty for armed robbers-usually by firing squad. Beginning from Babatunde Follorunsho[40]down to 'Dr' Oyenusi,[41]and in the not too distant past, the notorious Lawrence Anini[42] ('The Law') scores of armed robbers were dispatched to their deaths in this way. It is noteworthy stated the relevant provisions of the Act Section 1(2) of the Act provides: If: (a) the offender (i.e. the robber) is armed with any firearm or offensive weapon, or is in company of a person so armed: or (b) at or immediately before or immediately after the time of the robbery the said offender wounds or uses any person al violence to any person the offender shall be sentenced to death. 1(3) The death sentence may be by hanging or by firing squad as the governor of a state may direct. 4(b) Any person who conspires with any person to commit such offence whether or not he is present when the offence is committed or attempted to be committed shall be deemed guilty as a principal and punished accordingly.

It is submitted that the provisions are clear enough and need to further elucidation. Section 5 makes the aiders as variously put up above, liable "whether or not (they) are present when the offence is committed". This will undoubtedly cover the situation which came up in the case of the State v. Patrick Njovens[43] and if these provisions had been in existence then, the

[34] See Illustration (c) , Ibid, at p. 159
[35] See Illustration (b), ibid, at p. 161
[36] See Illustration (d), ibid, at p. 162
[37] Cap. P3 LFN, 2004
[38] Cap. C38 LFN, 2004
[39] Cap P3 LFB, 2004
[40] Section 1(2) of the robbery and firearms (Special Provisions) Act, Cap R11 LFN 2004
[41] One of the first robbers to be executed under the 1970 Decree; See chukkol, K.S., the Laws of Crime (Zaria; ABU Printing: Press Ltd., 2010) p. 210.
[42] Of the Wahum robbery fame who was also executed in the early 70s, ibid, at p. 211.
[43] Executed with his colleagues in early 1987, ibid at, p. 212

aiders who were at Ibadan at the time of the robbery would have been punished with death. The brief facts of Patrick Njoven's case were that the gtrial court convicted the four accused persons of abetting the commission of robbery and of receiving stolen property. While the 1st, 2nd and 3rd accused were convicted of accepting gratification, and of failing to arrest persons known to have committed offences of armed robbery, all the four accused were convicted of harboring known offenders. Their appeal turned mainly on the interpretation of the provisions of section 4(2) of the Penal Code, and the issues raised were: (1) what is the meaning of the word "element" as used in section 4(2) of the Penal Code – whether it is limited to actus reus only or whether it could have a wider meaning: (2) whether a person can be convicted in one state for an offence which he committed in another; and (3) whether "entry" as used in section 4(2) (b) of the Penal Code law includes forceful entry through custody. After reviewing a number of authorities, of the defense counsel Chief Rotimi Williams, SAN for 1st and 4th Appellants and Chief Richard Akinjide, SAN for the 2nd and 3rd Appellants, the supreme Court (as per the lead judgment delivered by Cokaer J.S,C) preferred the respondent's brief of arguments on these issues as presented by the Kwara State Dirdctor of Public Prosecution, then (Mr. Anthony Ekundayo who later became a judge of the High Court of Kwara State) and conclusively nailed the pegs of these arguments in the following reason: (1) That the word "element" in section 4(2) is more widely conceived and is not and should not be limited either to an actus reus or the mens rea in conventional criminal jurisprudence; that the "initial element" referred to in the section is the initial act or omission concerned, and for the purpose of applying the section, it is necessary to look for the initial element; that if the initial element occurs in the state even though other elements do not, the person who did the initial act or omission is punishable by the state under the Penal Code. Conversely, if the initial act or omission occurs outside the state and the other or others occur within the state and the person who did the initial act or omission afterwards enters the state, he is, by such entry, liable to be tried by the state under the Penal Code. (2) That the entry postulated by section 4(2) is not necessarily a voluntary entry and, whether the offender be apprehended in the state or be in custody in the state, his entry is complete for the purpose and intent of section 4(2)b) and he is triable in the state under the Penal Code. It is submitted that since the decision of the supreme court in this case has laid the previous arguments to rest, no further contention can arise with regards to voluntary or involuntary entry of the accused person into jurisdiction.

While dealing with the offence of robbery under the Robbery and Firearms Act, it is important to see what "a firearm" or "an offensive weapon" is for purposes of the Act. These terms are defined in section 13 of the Act as follows: Firearm – includes any canon, gun, rifle, carbine, machine gun, revolver, pistol, explosive or ammunition or other firearm whether whole or in detached form. Offensive weapon – includes: airgun, air pistol, bow and arrow, spear, cutlass, matchet, dagger, cudgel or any piece of wood, metal, glass, or stone capable of being used as an offensive weapon.

No doubt, any robbery tribunal will use its common sense to see whether or not the things the accused person carry to the scene of robbery can fall within any of the definitions given under section 13 of the Act. On strict interpretation, it would appear that in a robbery an accused found, not with any gun but with some pieces of ammunition in his pocket be deemed to have robbed with a firearm under the provisions of the Act. Will the accused's pocket, be deemed to have robbed with a firearm under the provisions of the Act? Will the accused's victims be terrified to hand over property under that condition? These nagging questions expose the defects in the provisions of section 13 of the Act and therefore need urgent review to ensure justice and fair play.

It is noteworthy that when the first Robbery and Firearms Decree was promulgated in 1970 (as No. 70) there was no provision made for appeal by convicted armed robbers. In 1974, however, the Robbery and Firearms (Special Provisions) (Amendment) Decree was

enacted and appeals to regular courts were allowed. Consequently, many cases[44] reached the Supreme Court before appeals were again disallowed by the repeal of the old law as affected by the current Decree. Be that as it may, one cannot help noting with regret, the practice then existing in Nigeria regarding the 'ousting' of jurisdiction of regular courts in robbery and a host of other cases. For one thing, it is sub mitted that tribunal's judgment and not forms any precedent, a vital tool in the growth and development of many legal systems. This is so, because a tribunal is not a court of record within the meaning given to that term by the constitution and since the majority of tribunal members were officers in the forces, their inclusion does also violate the principle of separation of powers, clearly envisaged in that constitution. In one of the cases that reached, the Supreme court[45] (Per Sowemimo, J.S.C) remarked:

> ……There is no doubt that with the series of decrees just before the coming into operation of the present Constitution, Courts are placed in some difficulties in interpreting some of the older Decrees which have had to be either repealed or amended to conform…with a proper court system (emphasis supplied)

The words "proper court system" it is opined clearly suggests that there is something improper with the 'tribunal culture' of that era and it is submitted that normal courts ought to have been allowed to play their role fully. This is more so, since all the military governments we had in Nigeria did make repeated claims of ruling, not by the gun, but by law and therefore respecting the rule of law. At the very least, if robbery tribunals are to continue to exist at all, appeals from their judgments should be made to lie to the Court of Appeal or to the Supreme court. This procedure, it is submitted, would enable the accused person to exhaust all the available legal avenues at his disposal in order to strictly ensure that the end of justice is met accordingly in the circumstances.

2.10 Kidnapping And Terrorism

Recently, kidnapping has been added as a capital crime in most state.[46] The Imo State House of Assembly passed a Bill on May 4, 2009 providing for the death penalty for anyone convicted of kidnapping or whose premises are used by a kidnapper to hold someone hostage. Justice Goddy Anunihu of the Owerri High Court said the detained leader of the Movement for the Actualization of the Sovereign State of Biafra (MASSOB), Chief Ralph Uwazurike who is facing trial over alleged kidnapping and hostage taking risked the death penalty on conviction.[47] In like manner, the Senate Committee on Terrorism has recently made a proposal that the offence of terrorism should be punished with death.[48]Though, the Senate's proposal does not automatically translate into law until due process is followed. As at the moment, there has been no decided case in Nigeria where anybody has been sentenced to death or and actually executed. Hence, the global trends now support the abolition of the death penalty, it

[44] (1973) NSCC 257

[45] See, for instance, State v. Odili (1977) 4 SC 1, State v. Adedeji (1985) 1 SC 257 and Sate v. Daniel Karume (1985) 2 SC 357.

[46] State v. Edwin Johnson alias Sofa boy (1981) 2 SC 29

[47] Dupe, a., Death Penalty – A Dying Fashion, Vanguard Newspaper May 6, 2010 available at http//allafrica.com/stories/201005061113.html.

[48] Val, O., Kidnapping: Uwazurike Risks Death Penalty on conviction, NIGERIA BEST FORUM, February 18 2010 available at http://www.nigerianbestforum.com/index.php? Topic=65951.0; See the prohibition of Hostage Taking and Other Related Offences Law 2009 of Imo State and the Internal Security and Related Matters Law of Ebonyi State. Other States with similar laws include Abia and Akwa Ibom States.

is the opinion of the researcher that life imprisonment would be better as the death penalty for whatever reason does not allow room for the reformation of the victim. At this juncture, the dissertation will examine some offences punishable with death under the Sharia Penal Code in the Northern States of Nigeria.

3. OFFENCES PUNISHABLE WITH DEATH UNDER THE SHARIA PENAL CODE

3.1 Hirabah-Brigandage Or Highway Armed Robbery

The term hirabah is defined by Sayyid Sadiq,[49] as an act of robbery by a group of armed men within the territory of the Islamic State so as to create anarchy under which the property, safety, dignity and religious values of the people would be violated. It is immaterial whether the [person committing the Hirabah are Muslims or non-muslims or that the act is committed by a group or individual. On the other hand, Maliki school defines Hirabah as a criminal act by a person or persons who obstruct the highway or any other place by causing disorder among the community or by attacking people with the intention of appropriating their property by the use of force in a situation where the victim(s) is/are unable to defend himself/themselves or get immediate help. It makes no difference according to Ahmad whether such a person has killed people or not and whether he is known or famous for that same act or not.[50] Hanafi School and a view in Hanbali School according to Bambale defines Hirabah as a criminal act which involves the use of force and causes considerable isecurity along the highways.[51]

Shafi'I School, the author maintains, defines Hirabah as a criminal act in which the offender unlawfully appropriates other people's property by the use of force and instill fear or terror in the minds of the community.[52]This crime is regarded as a war against Allah and His Messenger and an attempt to spread mischief, horror, grave or widespread breach of public peace, mutiny, sedition, riotous tumult etc, in the world.[53]The same act of Hiraba can be technically referred to as robbery or brigandage. It is highway robbery if the number of robbers is between one to four and known as brigandage if the number of robbers is from five and above.[54]It is submitted that since the Nigerian legal system adopts the Maliki School nomenclature, this dissertation would also adopt the Maliki school definition of Hiraba.

In Hiraba as maintained by Bambale, there are several alternative punishments arranging from execution, crucifixion, amputation of hand and foot and exile. Therefore, it is open to the judge to pass any one of the following sentences which he deems fit under circumstances of each case.[55]Some jurists have suggested the following punishments under the following circumstances.[56]

(a) Where murder is committed and property robbed, the punishment is crucifixion;
(b) Where murder is committed but no property is robbed, the punishment is death sentence;
(c) Where murder is not committed but property is robbed, the punishment is cutting of hand and foot; and

[49] Simon, O., "Senate committee Supports Death Penalty for Terrorism" Tribune, Tuesday November 23, 2010 p. 37.
[50] Sadiq. S., (N.D); Fiqh al-Sunnah, Vol. 11, Dara Kitah-al-Arabi; p. 464.
[51] Al-amin, Alhaji Muhammead Ahmad (1989); al-Yasir Fil Hudud Wal Jinayal wa al-Ta'zir. Darual Matbual al Hadith, Jeddah; p. 155; See Bambale, Y.Y., Crimes and Punishments under Islamic Law (Lagos: Malthouse Press Ltd., 1998) p. 69.
[52] Awadah, A (1985): al-Tashri al-Jana'I al-Islami; Vol. 11, Dara-Urubah, 6th ed., p. 518; ibid, at p. 71.
[53] Ibid, at p. 70
[54] Ibid, at p. 72
[55] Ibid, at p. 74
[56] Awdah (1985) op. cit, Vol.11, p. 638

(d) Where murder is not committed, and property is not robbed but road is made unsafe, the punishment is exile or imprisonment. The death sentence to be inflicted is by sword.[57]

As to the method of crucifixion, Bambale holds that the jurists are divided on it. For instance, he argues that Hannafi School and Ibn al-Qasim of Maliki School are of the view that the criminal should first be crucified alive and then be thrust by a javelin.[58]The second view the author says is canvassed by shafi'I and Hambali schools along with some jurists of the Maliki School that the criminal should first be executed in the usual manner and his body should subsequently be crucified on the gibbet for three days as warning and deterrent to others.[59]

To prove Haraba, Bambale holds that one opinion is that the victims may give evidence against the robbers. But, the other opinion according to him is that the victims should not give evidence against the robbers, because as a direct victim, the position is that there exists a kind of enmity between him and the accused. Since there exists enmity between them, the competence of the victim to give a valid testimony against the robbers becomes doubtful.[60]The study disagrees with the second opinion and alings with the first one as that, in his opinion, is the best evidence as it emanates from the person (victim) who say the robber(s) face to face and suffered whatever injury that the accused must have inflicted on him.

Now, looking at Hiraba from the statutory point of view,[61] section 152 provides that: Whoever acting alone or in conjunction with others in order to seize property or to commit an offence, or for any other reasons voluntarily causes or attempts to cause to any person death or of instant hurt, or of instant wrongful restraint in circumstances that renders such person helpless or incapable of defending himself is said to commit the offence of Hiraba. Section 154(c) and (d)[62] on the other hand provide that: Whoever commits Hiraba shall be punished with death sentence where death was caused, but property was not seized and with crucifixion, where murder was committed and property was seized respectively. Here, the work does not see any difference between the provisions of the foregoing sub-sections of section 153 as both crucifixion and death sentence are semantically synonymous.

3.2 Zina-Adultery Or Fornication

According to all Social Systems, since the beginning of history to date, there is unanimity of views that the Act of Zina is religiously sinful, morally wicked, socially evil and objectionable.[63] But in modern penal systems, voluntary sexual relationship is not considered a crime.[64]This sexual freedom is completely unknown to all the sacred laws. All laws, Islamic, Christian, Jewish to mention a few out of a long list of others forbid all types of sexual relationship outside marriage.[65]The differences between these laws it is sub mitted, appear in what are considered unlawful and punishable sexual relations, and the punishments prescribed for the prohibited practices. The crime of Zina has been variously defined by scholars. The first one is that Zina is a "Sexual intercourse between a man and a woman without the legal

[57] Ibid, at p. 73
[58] Ibid, at p. 74
[59] El-Awa, M.S. Punioshm ent in Islamic Law (Indiana Polis: American Trust Publications. 1982) pp. 10-12.
[60] Waliullah, M., Muslim Jurisprudence and the Qur'anic Law, (New Delhi: Jaj company, 1986) p. 159
[61] Ibn Hazm (N.D), Al-Muhalla, Vol. XI, p. 318
[62] Zamfara Sharia Penal Codde Law, Law No 10 of 2000
[63] Ibn Hazm (N.D), Al-Muhalla, Vol, XI, p. 318
[64] Zamfara Sharia Penal Code Law, Law No. 10 of 2000
[65] Ibid.

relationship of husband and wife existing between them".[66]It is also defined as: "a sexual intercourse by a man with a woman who is not his wife and a woman with a man who is not her husband".[67]In the same vain, Zina is defined as: "a sexual intercourse between a man and a woman who are not lawfully married to each other".[68]From the various definitions given by scholars above, it is submitted that Zina in its simplest legal term can be defined as the insertion of the male organ into the female sexual organ between those not lawfully married to each other. It is also submitted that the mere penetration of the glens of the penis is sufficient legal ground for punishment and it is not necessary that the penetration is full or that the sexual act be complete.[69] It is pertinent to note according to Bambale that the definition of Zina as a crime differs from one school to another. Though despite the difference, the schools agree that the main element in this crime is the unlawful intercourse. According to Hanafi School, Zina is defined as:

> ….a sexual frontal intercourse of a man and a woman who is neither his wife nor his slave girl nor is there any valid reason to believe that the sexual act was committed under the misapprehension that the woman was his own wife or his slave girl.[70]

The Shafi'I defines Zina thus: 'the insertion of a male organ into the female sexual organ."[71]The Maliki School on its part defines it as: "the entry of a male organ into the frontal sexual part or in the rectum of a woman or man without legal right to any dobt about it being legal".[72] Pursuant to the foregoing definitions, it is submitted that it is only the Maliki School; that includes homosexuality as an offence deserving the same punishment as the sexual intercourse. Bambale's work maintains that there are many texts from the Holy Qur'an and Sunnah condemning Zina as a crime that is prohibitive and punishable. For example, according to him, in the Holy Qur'an, it is stated thus: "Nor come nigh adultery; for it is shameful and evil, opening the road to other evils",[73] Also in another verse it is stated thus: Nor commit fornication; and anybody that does not only meets punishment, but the penalty on the Day of Judgment will be doubled to him and he will dwell therein in ignominy.[74] Lastly, this verse is saying that believers (Muslims) will never be successful unless they: ……abstain from sex, except with those joined to them in the marriage bond, but those whose desires exceed those limits are transgressors.[75] The author says that as to the traditions of the Holy Prophet (SAW), Abdullahi Ibn Mas'ud is reported to have said: I asked the Holy Prophet (SAW) o Prophet of Allah which is the biggest sin? He replied: to set up; rival with Allah by worshipping others though He alone has created you. I asked, what is next? He said, to kill your child lest it should share your food. I asked what next? He said, to commit illegal sexual intercourse with the wife of your neighbor.[76] Under section 126 of the Sharia Penal Code,[77]adultery is defined thus:

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[66] Bambale, Y.Y. Crimes and Punishment under Islamic Law, (Lagos: Malthouse Press Ltd, 1998) p. 28
[67] Ibid, at p. 31
[68] Onoka, M.C., Family Law (Ibadan: Spectrum Books Ltd., 2003) p. 61
[69] Bambale, opp, cit p.29
[70] Naseef, A.O. Encyclopedia of Seerah, vol. II (London: The Muslim School Trust, 1982) p. 772.
[71] Ibn Rushd., (N. D); Bidayat al-mujtahid, Vol.II, Cairo, p.396.
[72] Waliullah, Mis., Muslim Jurisprudence and the Qur'anic Law of Crimes (Delhi: Taj Co., 1986) p.138.
[73] Bambale, op, cit., at p. 29
[74] El-Awa, M.S., Punishment in Islamic Law, (Indiana Polis: American Trust Publications, 1982) p. 14.
[75] Ibid, at p. 16
[76] Ibid, at p. 18
[77] Chapter 17 vs 32

Whoever, being a man or a woman fully responsible, has sexual intercourse through the genital of a person over whom he has no sexual right and in circumstances in which no doubt exists as to the illegality of the act, is guilty of the offence of Zina. On the other hand, section 127(b)[78]states that: 'if married, with stoning to death' (rejm). It is submitted that though adultery is repulsive, the punishment of stoning to death is too harsh; a lesser punishment like a term of imprisonment is preferable. Further, stoning to death in itself, amounts to torture, inhuman or degrading treatment which is contrary to section 34(1)(a) of the 1999 constitution as amended.

3.3 Sodomy (Liwat)

Bambale admits that homosexuality is a great sin in Islam and a disgraceful and unnatural act of sex to satisfy one's passion. According to him, it arises in a situation where a man engages another man through the anus to satisfy his sexual urge. It is defined as carnal inter course c omitted against the orer of natural by a man with a man, or in the same manner with a woman or by a man or a woman with a beast in any manner.[79] The Holy Qur'an, the author maintains, has left the question of punishment (to be meted out to the culprit) open, and the judge may, in exercise of his discretion, pass any sentence he deems fit. The Qur'anic verse will testify to that, thus: If two men among you are guilty of lewdness, punish them both. If they repent and amend, leave them along, for Allah is oft-returning, most merciful.[80] The above Qur'anic verse, shows that no fixed punishment has been specified by the Holy book. The offender shall be punished by way of Ta'azir only. The Holy Prophet (SAW) the author argues, admonished this crime bitterly. Hence:

(a) Four kinds of people are under the wrath and displeasure of Allah, whether they are asleep or awake and they are men who try to imitate women and those women who try to imitate men and those who commit sex with animals and those who commit sex with men.[81]
(b) One who touches a male with passion, he will be cursed by Allah, the angels and all peoples.[82]
(c) Allah, the Most High will not look at a man or woman through her anus.[83]

As to the punishment, Bambale revealed that there are divergent views because the Holly Prophet (SAW) did not determine such a case or punish such culprits despite the tradition saying thus: "if you find someone who is committing an act of the commitment of Lut (that is homosexuality) kill the one on top and the one below".[84] Kill both who commit homosexuality.[85]

In short, it has been unanimously agreed according to the author that homosexuality is a crime. The companions of the Holy Prophet (SAW0 differ among themselves as to the punishment of a homosexual. This is so because despite the traditions stated above, Holy Prophet (SAW) did not determine such a case or punish such offenders.[86]

[78] Chapter 25 v. 68 and 69
[79] Walliullah, op. cit p. 148
[80] Chapter 4 v. 16
[81] Karim, A.M.F., (N.D.0, Mishakt-Masabih, vol. 11, (Pakistan: Law Publishing co., 1995) p. 545.
[82] Ibid, at p. 547
[83] Ibid, at p. 549
[84] Ibid, at p. 353
[85] Ibid, at p. 356
[86] Ibid, at p. 357

Caliph Abu Bakr, the first Calilph Bambale, strongly held, held that both the offenders should be burnt[87]. Caliph Ali, the fourth Caliph on the other hand, held that the offenders should be flogged and then stoned.[88] Another companion, Abbas, held that the offenders should be confined in a bad smelling placed so that they may die by the stench.[89] As a result of these differences among the companions, the author maintains that the schools of thought also differ.[90] Ahafi'I, Hambali Schools and the two disciples of Imam Abu Hanifa (Abu Yusuf and Muhammand as-Shaybam) according to him are of the view that the crime is considered as Zina, i.e. stoning for the married and lashing (100 strokes) for the unmarried.[91]On the other hand, Imam Abu Hanifa and Zabiri Schools are of the view that the culprits ought to have been punished by Ta'azir.[92] Statutorily, sodomy is defined under section 130 of the Panel Code[93]as:

> Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy. Provided that whoever is compelled by the use of force or threats or without his consent to commit the act of sodomy upon the person of another or be the subject of the act of sodomy shall be deemed to have committed the offence.

Section 131(a)[94]provides that: "whoever commits the offence of sodomy shall be punished with:

(a) Caning of one hundred lashes if unmarried and shall also be liable to imprisonment for the term of one year; or
(b) If married with stoning to death (rajm).[95]

The researcher prefers caning of one hundred lashes to stoning to death for a married convict because it serves as public disgrace and can effectively deter others who may intend to commit the offence in future. Further, caning can reform the convict while death is irreversible and gives no room for reformation.

3.4 Forcible Zina (Rape)

Bambale argues that all the rules that apply in Zina apply here. The only difference is that the one who commits the rape will be punished by stoning to death if married or married before, or 100 lashes if unmarried plus one year in exile (now substituted with imprisonment).[96] It is reported by Wa'il Ibn Hujz according to Bambale that a woman went out in the time of the Holy Prophet (SAW) to go to prayer and a man who met her, attacked her and got his desire of her. She shouted and he went off and when a company of the emigrants came by, she said "that man did such and such to me". They seized the man and brought him to Allah's messenger who said to the woman, "go away for Allah has forgiven you". But of the man who had intercourse with her, he said, "stone him to death",[97]because he

[87] Ibid, at p. 359
[88] Ibn Qudamah, (N.D.), Al-Mughri, Vol. X; p. 160
[89] Ibid,
[90] Walliullah, op. Cit p. 149
[91] Ibid, at p. 151
[92] Ibid, at p. 164
[93] Ibid, at p. 166
[94] Zamfara Sharia Penal Code Law, 2000.
[95]Ibid.
[96]Ibid.
[97] Al-Qaradawi, Y. The Lawful and the Prohibited in Islam, (Kuwait: F.S.O. Publishers, 1984) p. 149

was married. The work contends that death penalty is not justifiable for any sexual offence however repulsive the offence may be but suggests that a lesser punishment can as well serve the purpose of deterrence.

3.5 Incest

Section 132(1)[98] states: Whoever, being a man, has sexual intercourse with a woman who is and whom he knows or has reason to believe to be his daughter, his granddaughter, his mother or any other of his female ascendants or descendants, his sister or the daughter of his sister or brother or his paternal or maternal aunt has committed the offence of incest. (2) Whoever, being a woman, voluntarily permits a man who is and whom she knows or has reason to believe to be her son, her grandson, her brother or the son of her brother or the son of her brother or sister paternal or maternal uncle to have sexual intercourse with her, has committed the offence of incest.

Section 133[99] provides that: (a) Whoever commits incest shall be punished with caning of one hundred lashes if, unmarried and shall also be liable to imprisonment for a term of one year; or (b) if married with stoning to death. The research faults stoning to death as punishment, aligning with Nwabueze's general principle which holds that a punishment that denies a person's status as a human being or which degrades his personality as a human being is inhuman.[100]

3.6 Riddah – Apostasy

Riddah is classified among the seven destructive crimes[101]that may be committed by any Muslim. One basic aim and objective of the Shariah behind the; punishment of Riddah according to Bambale is the preservation of the Islamic faith, since the bedrock of Islam and sharia rests on faith. By committing the crime of Riddah, a lot of issues are involved. There is the withdrawal from the dominion of Allah, the most High; blasphemy. There is also heresy and mockery to the Islamic community. When all these are taken into consideration, the crime of Riddah is made punishable so as to close all doors that will debase the sacred notion of the Islamic religion.[102] The Arabic equivalent for apostasy the author holds, is Riddah from the root Radd. Which *inter alia* means 'to treat', 'to retire', 'to withdraw from or fall back from'.[103] From the legal perspective, Riddah is the renunciation or abandonment of the Islamic faith, for any other religion, by one who professed it. The person who forsakes Islam for unbelief or for another religion is called "Murtadd'.[104] Before the crime of Riddah is established and the person becomes condemned as an apostate, the following conditions must be satisfied.[105]

a) The culprit must be an adult
b) Must be sane
c) Must have acted voluntarily.

The crime of apostasy is proved by the evidence of two competent witnesses who must be explicit and precise in showing that the accused person is guilty of apostasy by virtue

[98] Zamfara Sharia Penal Code Law, 2000
[99] Ibid
[100] Nwabueze, B.O., Presidential constitution of Nigeria, (London: C. Hurst & Co., 1981) p.411.
[101] Khan, M.M. (N.D): Sahih al-Bukhari, vol. III, Dar al-arabia, Beiru, Lebanon; pp. 560-561.
[102] Rhman, S.A., Punishment of apostasy in Islam, (Lahore Pakistan: Institute of Islamic Culture, 1978)
[103] Ibid at p. 11
[104] Ibid at p. 13.
[105] Ibid, at page 17

of such and such a declaration or by doing so and so.[106]The other method of proof is by the confession of the accused himself which has to be voluntarily.[107]

It is noteworthy that there are so many Qur'anic verses which mention apostasy as an offence but do not spell out the punishment to be carried out on the offence. One the contrary, all the verses contain only an assurance that the apostate will be punished in the Hereafter. The verses cited hereunder attest to this fact: Whoever rejects faith in God after believing in Him, excepting under compulsion while his heart remains firm in faith – but such as open their breast to unbelief on them is wrath from God and theirs will be a dreadful penalty.[108]And whoever of you turns from his religion and dies disbelieving, their works have, failed in this world and the next. Those are the inhabitants of fire; therein they shall dwell forever.[109] These and many other verses have expressly or by import mentioned Riddah. It is the opinion of the researcher that since nowhere in the Holy Qur'an is the punishment of it mentioned, the punishment is to be found in the Sunnah of the Holy Prophet Mohammed (SAW). The death penalty prescribed as a Hadd; punishment as claimed by Bambale is found in the Hadith. The principlal Hadith on which the case for death sentence for apostasy is built on is the one narrated by Ibn Abbas thus: "whoever changes his religion, kill him".[110]The same Hadith is also traced to Hadrat A'isah thus: "Whoever changes his religion, kill him verily; Allah does not accept repentance from His servant who had adopted disbelief after having accepted Islam".[111]Another Hadith commonly used in discussing apostasy is the one transmitted by Bukhari, Muslim and Abu Dawud thus: "The life of a Muslim may be taken only in three cases; the married adulterer, life for life; and the one who abandoned the religion".[112]The research abhors the death penalty in its entirety based on the authority of Furman v. Georgina[113]Where the American supreme court laid down four tests for the determination of the "cruel and unusual" contents of any form of punishment to be (a) Is it degrading? (b) Is it wholly arbitrary? (c) Is it patently unnecessary? Applying these tests, the court held that:

> …. In sum, the punishment of death is inconsistent with all four principles: death is an unusually severe and degrading punishment, there is a strong probability that it is inflicted arbitrarily; its rejection by contemporary society is virtually total, and there is no reason to believe that it serves any penal purpose more effectively than the less severe punishment.[114]

3.7 Baghye – Rebellion Or Treason

Rebellion is regarded as a political crime and the purpose of such crime is the achievement of certain political goals.[115]A political crime does not take place in normal conditions. It takes place in extra ordinary conditions, i.e. in a state of revolution or civil

[106] Sabiq, S. (N.D), Fiah ul-Sunnah, Vol. II, Darul Kitbah al Arabi, p. 64.
[107] Ibid, at p. 67.
[108] Holy Qyur'an, chapter 16 v. 106.
[109] Ibid, Chapter 3 v. 35
[110] Kirim, l"A.M.F. (N.D), Mishkat-al-Masabit, Vol. 11, (Lahore, Pakistan: Law Publishing company, 1978) p. 524.
[111] Rahman, op. cit p. 64
[112] Karim, op. cit p. 526
[113] Furman v. Georgia 403 U.S. 952, 91 S. Ct. 2282, 29L, Ed. 2d 863, (1971).
[114] Ibid.
[115] Bambale,Y.Y., Crimes and Punishment under Islamic Law, (Lagos: Malthouse Press Ltd., 1998) p. 83.

war.[116]Rebellion causes instability and destruction to the social political system of an Islamic State. Under the sharia, rebellion is regarded as a crime greater than murder and therefore attracts the death penalty.[117]According to Bambale, "Allah forbids all shameful deeds, injustice and rebellion".[118]The Holy Prophet (SAW) is reported to have said: "Cut off the head of any man who goes out and causes division among my people".[119] The author maintains that once a rebellion sets in, the Head of State or leader must wage a war against the rebels in order to subjugate them. The wounded according to him are to be spared, the captives and those who lay down arms are also to be spared since the intention of fighting the rebels is to bring them back to the community. According to Qudah Shaheed, 'Baghye' attracts the following ingredients: there should be the use of force, there should be criminal intention, it must aim at the disposition of the leader or the head of state and the rebels must owe the rebellion's power and grandeur to followers and supporters. The position of the Holy Qur'an is that the rebels are to be invited to repent and join the community and that if they do so, their repentance is accepted and free from liability.[120]The Holy Qur'an prescribes that there should be reconciliation between the fighting groups and any group rejecting reconciliation should be fought and killed. Accordingly, Caliph Abubakar fought those who refused to pay Zakkat, Caliph ali also fought certain rebellious groups.[121]

4. VARIOUS METHODS OF EXECUTION IN NIGERIA

It is a notorious fact that the main method of execution of the death penalty in Nigeria is hanging during civilian regimes and firing squad during military intervention in politics. According to Foucault,[122]any method of executing the death penalty must obey two m ajor principal criteria. First, it must produce certain degree of pain, a calculated graduation of pain. It is the art of maintaining life in pain in such a way that death is subdivided into a "thousand deaths", whereby the production of pain is regulated in terms of its intensity, quality and duration. There is a narration of the execution of an assassin in 1584 whom: On the first day, he was taken to the square where he found a cauldron of boiling water, in which was submerged the arm with which he had committed the crime. The next day, the arm was cut off, and since it fell at his feet, he was constantly kicking it up and down the scaffold; on the third day, red-hot pincers were applied to his breasts and the front of his arms; on the fourth day, the pincers were applied similarly on the back of his arm and buttocks; and thus, consecutively, this man was tortured for eighteen days. On the last day, he was put to the wheel and maillot (beaten with a wooden club). After six hours, he was still asking for water, which was not given to him. Finally, the police magistrate was begged to put an end to him by strangling, so that his soul should not despair and he lost.[123] In execution such as described above, the aim was not only to kill the criminal, but also to punish the body; a body effaced, reduced to ashes and thrown to the winds; a body destroyed piece by piece; a body boiled or burnt; and a body mutilated, all with the sole aim of making it experience intense pain. Another example was a celebrated torture and execution of another notorious criminal who was:

[116] Oudah Shaheed, A., (1987): Criminal Law of Islam Vol. 1, I.I.P (PVT) Ltd., Karachi-Pakistan; pp. 112-113.
[117] Karim, A.M.F. (N.D); Mishkat-III-Masabih Vol. II, Law Publishing co. Lahore (Pakistan), p. 522
[118] Holy Qur'an Chapter 16 verse 90
[119] Karim, A.M.F. (N.D.) op. cit., at pp. 542-525
[120] Holy Qur'and Chapter 49 verse 9.
[121] Ibn Qudamah (N.D.0; Al-Mughni lvol. 8, p. 150.
[122] Foucault, M., Discipline and Punish, (Harmondsworth: Penguin, 1997), p. 3.
[123] Ibid at p. 53.

"…..blindfolded and tied to a stake; all around, on the scaffold, were stakes with iron hooks…" Secondly, torture is part of the ritual and it has two requirements; it must mark the victim, "it is intended either by the scar it leaves on the body or by the spectacle that accompanies it, to brand the victim with infamy" it must be spectacular, "it must be seen by all almost as its triumph". Torture is meant to employ excess violence and the bring out of the guilty man depicts the expression of the "ceremonial of justice". Even after death, the torture of the body continues with corpses burnt, ashes thrown to the winds, bodies dragged on huddles and exhibited at the roadside. In short, "justice e pursues the body beyond all possible pain".[124] The main methods of execution of death penalty in Nigeria include: handing, stoning and firing squad.

4.1 Hanging

For hanging, Dambazau maintains that the executioner places a noose around the convict's neck, a trap door opens and the convict drops. The fall is supposed to snap the third and fourth cervical vertebrae or cause asphyxiation. To prevent an accidental decapitation, the executioner limits the length of the rope according to the convict's weight. The convict becomes cyanotic, the tongue hangs out, the eyes pop out of his head, there is a groove on the neck, vertebral lesions and internal fractures. Survival time is 8-12 minutes.[125]This mode of execution is common in Nigeria mostly during civilian regimes. They are always carried out in medium and maximum prisons in Nigeria. A good example of hanging is the case of Saddam Hussein. Saddam Hussein was President of Iraq from July 16, 1979 until April 9, 2003 when he was deposed during the 2003 invasion led by a United States allied coalition. After the capture of Saddam in Ad Dawr near his hometown Tikrit, he was incarcerated at Camp Cropper. On November 5 2006, he was sentenced to death by hanging and was executed on 30th of December, 2005 in prison. The Iraqi Government released an official video tape of his execution, showing him being led to the gallows and ending after his hear was in the hangman's noose. International public controversy arose when an authorized mobile phone recording of the hanging showed him falling through the trap door of the gallows. The unprofessional and undignified atmosphere of the execution drew criticism around the world from nations that both oppose and support capital punishment.[126]The study aligns with the opposition of the unprofessional and undignified execution as it in his opinion a cruel, inhuman and degrading treatment. When a person is sentenced to death in Nigeria, the sentence shall direct that he shall die by hanging. In a mandatory prescription, the convicting judge shall pronounce the punishment in the following language: The sentence of the court upon you is that you be hanged by the neck until you be dead.[127] Executions by hanging in Nigeria are always carried out in Maximum prison like Kirikiri, Lagos, Kaduna, Port Harcourt, Enugu, Jos and others too numer5ous to mention here after the due process of law.

4.2 Firing Squad

In the case of firing squad, the sentenced is carried out by a firing team made up of six to eight soldiers, but not all of them are loaded with life bullets, some have blank ammunition. Survival time is uncertain.[128] Execution by firing squad is sometimes called fusillading (from

[124] Ibid, at p. 59
[125] Dambazau, A.B., Criminology and Criminal Jjustice, (Kaduna: NDA Press, 1999) p. 153
[126] Saddam Hussin and top Aides Hanged, BBC News, 15 January, 2007; Pierrepoint, Alhert (1989) Executioner Pierrepoint, Holder & Stoughton General Division, ISBN 0-340-21307-8.
[127] See S. 367(2) of the CPA
[128] Dambazau, A.B., Criminology and Criminal Justice (Kaduna: N.D.A Press, 1999) pp. 153-154

the French fusil rifle). Some reasons for its use are that firearms are usually readily available and a gunshot to a vital organ usually kills relatively quickly. Before the introduction of firearms, bows or crossbows were used. Sakint Sebastine is usually depicted as executed by a squad of roman auxiliary archers around 288AD; King Edmund the Martyr of East Anglia, by some accounts, was tied to a tree and shot dead by Vikings archers.[129] Usually, all members of the group are instructed to fire simultaneously, thus preventing both disruptions of the process by a single member and identification of the member who fired the lethal shot.[130]The prisoner is typically blindfolded or hooded, as well as restrained, although in some cases, prisoners have asked to be allowed to face the firing squad without their eyes covered. Executions can be carried out with the condemned either standing or sitting.[131]There is a tradition in some jurisdictions that such executions are carried out at first light, or at sunrise, which is usually up to half an hour later. This gave rise to the phrase "shot at dawn".[132]Execution by firing squad is distinct from other forms of execution by firearms, such as an execution by a single firearm to the back of the head or neck. However, the single shot (coup de grace) is sometimes incorporated in a firing sq7uad execution, particularly if the initial volley turns out not to be immediately fatal.[133] The Special Tribunal (Miscellaneous Offences) Decree No. 20. 1984[134] Introduced death penalty for armed robbers by firing squad in Nigeria. Beginning from Babatunde Folorunsho down to 'Dr. Oyenusi and in not too distant past, the notorious Lawrence Anini ('The Law), dozens of armed robbers were dispatched to their deaths by firing squad.[135]

4.3 Stoning (Shariah)

Sections 127(b), 133(b) of the Shariah Penal Code provide for stoning to death of Muslims who are married and are found guilty and convicted for the sexual offences of Zina (adultery or fornication, sodomy (Liwat) and incent respectively.[136]According to amnesty International, one Safiya Husseni was sentenced to death by stoning for alleged adultery. She was finally acquitted on procedural grounds. An impoverished mother of five from the remote Tungar Tudu village in Northern Nigeria, Husseini has been at the centre of an international uproar since a lower Islamic C ourt found her guilty of adultery and under Sharia, or Islamic Law, sentence ed her to be stoned to death while buried up to her waist in sand.[137]In another instance, an Islamic Appeal Court has upheld a sentence of death by stoning for adultery against a Nigerian woman, Amina Lawah, 30 who was found guilty by a Court in Kaduna in March, 2002 after bearing a child outside marriage. Amina was a single mother who was sentenced to death by a Lower Islamic Court for having a baby 10 months after she was divorced.[138]Again, another man Yunusa chiyawa was sentenced to death by stoning in Bauchi State in June 2002 for eloping and having sex with the wife of a friend. The woman was acquitted after the presiding judge accepted her claims that Chiyawa had cast a spell on

[129] Ibid.
[130] 1947 US Army Manual 27-4 "Procedure for Military Executions".
[131] Ibid.
[132] Ibid
[133] Ibid.
[134] Section 6(3), Now section 1(3) of the robbery and Firearms (Special Provisions) Act. Cap. R11 Laws of the Federation of Nigeria, 2004.
[135] Chukkol, K.S., Laws of Crime, (Zaria; Ahmadu Bello University Printing Press Ltd., 2010) p. 210.
[136] Zamfara Shariah Penal Code Law, 2000.
[137] Leela, J. Nigerian Women Avoids Stoning to death, ABC News International, March 25, 2000 available at http;llabcnews.go.com. /international/storyd=80054&page=1.
[138] Dan Isaacs, Nigeria's Stoning Appeal Fails, (August 7, 2010, 11:55 am), available at http://news.bbc.co.uk/2/hi/africa/220211.stm

her.[139]Though in the opinion of the researcher, it is repulsive for a married person to commit adultery yet, the punishment of death by stoning is too harsh and barbaric for a sexual offence and would have preferred a lesser punishment like a term of imprisonment which would equally serve as deterrent to would-be adulterers. The work faults the decision of the presiding judge for acquitting the woman on her claims that Chiyawa had cast a spell on her because the judge failed to explain how this claim was proved. It is opined that the claim of the woman was an afterthought, and suggest that she ought not to have been sentenced to death by stoning but ought to at least be given a lesser punishment to serve as deterrent to others.

5. CONCLUSION

As a general rule, depending on the nature of crime and criminal punishment varies in intensity, mode, style and extent. It ranges from fine, imprisonment, death by various methods. Death as a form of punishment is the most controversial of all punishments. While some people argue that death is the best deterrent, other believe that it is unnecessary and immoral. Imprisonment covers various terms, and at its extreme, is life imprisonment. The essence of imprisonment is the deprivation of liberty, but convicted prisoners are supposed to be rehabilitated.

In the 21st century, many countries all over the world especially the advanced countries for example, the United Kingdom and many states in the United States of America have abolished death penalty because of various reasons. For example, the possibility of killing an innocent person knowing that death is irreversible, that many criminals are sentenced to death, is an unfair and discriminatory manner, - it is mostly suffered by the poor and minorities, that executions are unnecessarily expensive that conditions of contemporary society do not justify the imposition of death, that only god has the right to take life. The most recent argument is that death penalty is a threat to the right of life; hence global trends now favour the theories of reformation and rehabilitation. Though many African countries, including Nigeria, still retain death penalty. It is in the opinion of the research that Nigeria should join the band wagon and tope the global trend pursuant to some of the cogent and convincing reasons against death penalty.

[139] IRIN Africa, Stoning, Nigeria: Late appeal against Stopning Sentence. Aug. 10, 2010 available at htp;//irinnews.org/report.aspx?re[prtyeod=34111.