

**STATUTE REVIEW:
DEATH PENALTY FOR A LOAF OF BREAD? A REVIEW OF SECTION 1 (2) OF THE
ROBBERY AND FIREARMS (SPECIAL PROVISIONS) ACT**

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Abstract

Death penalty is unarguably the most serious form of punishment available in Nigeria's legal firmament for the treatment of criminal infractions of the law. It involves the officially sanctioned killing or execution of a person who has been found guilty of an offence for which the relevant law prescribes death as the penalty. Nigeria's Robbery and Firearm (Special Provisions) Act provides in its section 1 (2), for mandatory death penalty for any person who violates the provision irrespective of the circumstances of the case. The provision, which has arguably accounted for more than sixty percent of death sentences imposed by Nigerian courts, provides a veritable cause for concern. This study adopted the doctrinal research design with reliance on the use of library-sourced materials and is qualitative in outlook. It involves reflection on the essence and qualities of law and legal terms, adopting a priori and analytical techniques with a view to expounding and dissecting the contending issues. This work highlighted the undesirable state of the law particularly as regards the extent to which it cheapens human life and recommended for the amendment of the law to exclude death penalty for a convict whose offence did not involve the deliberate killing of another person.

Key Words: Death penalty, robbery, armed robbery, firearms, mandatory sentence.

1. Introduction.

The Robbery and Firearms (Special Provisions) Act² was enacted at a time when armed robbery was the most serious and prevalent violent crime in the country and the military government of the time apparently reasoned that 'a drastic problem needs a drastic solution.' The legislation, which has arguably accounted for more than sixty percent of death sentences imposed by Nigerian courts, provides a veritable cause of concern, particularly as regards the mandatory death penalty it imposes irrespective of the circumstances of the case. In the succeeding passages, we present the section under review, examine the implications of the provision, highlight concerns regarding the position of the law and argue for the amendment of the mandatory death penalty provision in the light of the disclosed issues.

2. Section 1 of the Robbery and Firearms (Special Provisions) Act.

The Act provides in section 1 as follows:

1. (1) Any person who commits the offence of robbery shall upon trial and conviction under this Act be sentenced to imprisonment for not less than twenty-one years.
- (2) If—
 - (a) any offender mentioned in subsection (1) of this section is armed with any firearms of any offensive weapon or is in company with any person so armed; or
 - (b) at or immediately after the time of the robbery the said offender wounds or uses any personal violence,The offender shall be liable upon conviction under this Act to be sentenced to death.³

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² Cap R 11 LFN 2004. This law was originally enacted as Decree No. 47 of 1970 and later re-enacted as Decree No5 of 1984 by the military regimes that ruled Nigeria within the respective periods.

³ Under s. 5 (a) & (b) of the Act, any person who aids, counsels, abets, procures or conspires with another person to commit the offence will be subject to the same punishment.

3 Death for a loaf of Bread⁴

X, a poor labourer has been out of job for about a week. Penniless and starving, he enters roadside provisions store and grabs a loaf of bread and begins to walk away. The storekeeper obstructs him to demand payment. X promptly deals the storekeeper a powerful punch to the face that sends him staggering away with bleeding, swollen lips while X flees the scene with the loaf of bread. Neighbours and customers chase X and apprehend him. As they are about to lynch him, the police arrive on the scene and take him away. X is subsequently arraigned in court for an offence contrary to section 1 (2) (b) of the Robbery and Firearms Act. He is tried, found guilty and sentenced to death. Death for a loaf of bread! The above hypothetical case of X may sound outlandish but that is the practical implication of the statutory provision. The Act defines robbery as ‘stealing anything and, at, or immediately before or after the time of stealing it, using or threatening to use actual violence to any person or property in order to retain the thing stolen....’⁵ Recall that section 1 (2) of the Act had already stipulated that if any person commits the offence of robbery and, ‘at or immediately before or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person’ the offender shall be liable to a sentence of death. In our hypothetical case, X, though unarmed, had used personal violence on the storekeeper and actually inflicted a wound on the latter, thus bringing X within the contemplation of section 1 (2).

In *Addo v State*⁶ the appellant together with three other persons robbed one Esman Fazubazic of some money and other valuables at gunpoint in the latter’s room in Pyramid Hotel, Calabar. While they were escaping, a hotel security man tried to catch him but he frightened the man away with his gun. Few days later he was arrested. He was subsequently put on trial for armed robbery, convicted and sentenced to death. Both the Court of Appeal and the Supreme Court upheld his conviction and sentence. It is worthy to note that although the appellant was armed with a gun, nobody was killed and nobody was injured in the course of the robbery. Similarly, in *Jiya v State*⁷ the accused persons attacked provisions shop and robbed two women of 2 GSM handsets, some provisions and some cash. Although they were armed with locally made guns, they neither killed nor injured anyone. They were later arrested, tried under the Robbery and Firearms Act, convicted and sentenced to death. Their conviction and sentence were upheld by both the Court of Appeal and the Supreme Court.

Again, in the earlier case of *State v Isiaka*⁸ the Appellant was charged with armed robbery contrary to section 1 (2) (a) of the Robbery and Firearms Act.⁹ The case of the prosecution was that he attacked PW2 with a cudgel and disposed her of her phone. A police patrol team which happened to be nearby, was apparently attracted to the scene by PW2’s shout, rushed on to the scene, saw the Appellant fleeing, and shot him on the leg. Hindered by the bullet wound, the Appellant fled into a nearby house from which the police picked him up. At the end of the trial, the High Court found him guilty as charged and sentenced him to death. He appealed to the Court of Appeal which overturned the decision and acquitted him, whereupon the Prosecution appealed to the Supreme Court. The apex court allowed the appeal and reinstated the conviction and sentence by the trial court.¹⁰ In the course of the lead judgment, Allagoa JSC stated referred to the dictum of Aniagolu JSC in earlier case of *Nwosu v State*¹¹ to the effect that ‘a judgment sending a man to the gallows must be seen to be a product of logical thinking, based on admissible evidence....’ Proceeding, his lordship noted that in the present case, the trial judge had taken pains to sum up and evaluate evidence presented before him, to

⁴ A hypothetical case.

⁵ S. 15 Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004.

⁶ [2023] 15 NWLR (pt 1908) 527.

⁷ [2020] 13 NWLR (pt 1740) 159

⁸ [2013] 11 NWLR (pt 1364) 162.

⁹ Cap R 11 LFN 2004.

¹⁰ See also *Usman v State* [2022] 13 NWLR (pt 1848) 419; *Akalazu v State* [2002] 13 NWLR (pt 1848) 453; *Eze v State* [1985] 3 NWLR (pt 13) 429; (1985) 2 NSCC 134. In all these cases, nobody was killed and nobody was seriously injured. In fact, in *Eze’s case*, the trial judge, after sentencing the accused to death, made a passionate recommendation for prerogative of mercy to be exercised in favour of the convict.

¹¹[1986] 4NWLR PT 35) 348.

discredit and discard confessional statement allegedly made by the respondent, and to thereafter convict and sentence him based on available credible evidence. His lordship further stated that, according to the provisions of the Robbery and Firearms (Special Provisions) Act,¹² ‘armed robbery is to rob with arms’ while the word ‘robbery’ means ‘stealing anything and at or immediately before or after the time of stealing it, using or threatening to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained.’ Further, he noted that the law makes a clear distinction between ‘firearms’ and ‘other offensive weapons.’¹³

4. Proportionality of Death Penalty

The Nigerian Constitution guarantees the right to life of all persons.¹⁴ Generally, any limitation or restriction on a guaranteed right is required to pass the test of proportionality.¹⁵ This requirement is even more stringent when the right in issue is the most fundamental right of all, the right to life. According to Lord Bingham, the test of proportionality addresses four questions, *viz*:

- (a) Is the legislative objective sufficiently important to justify limiting a fundamental right?
- (b) Are the measures which have been designed to meet it rationally connected to it?
- (c) Are they no more than necessary to accomplish it? [and]
- (d) Do they strike a fair balance between rights of the individual and the interests of the community?¹⁶

Similarly, Mr. Justice Marshall in *Tison v Arizona*¹⁷ quoted with approval the case of *Solem v. Helm*¹⁸ to the effect that:

- a court’s proportionality analysis under the Eighth Amendment should be guided by objective criteria, including:
- (i) the gravity of the offence and the harshness of the penalty,
 - (ii) the sentences imposed on other criminals in the same jurisdiction, and
 - (iii) the sentence . . . imposed for commission of the same crime in other jurisdictions.

Given that a restriction on a guaranteed right must pass the test of proportionality, it stands to sound reason for one to posit that the imposition of capital punishment for any offence which did not occasion the deprivation of life of another person, is a disproportionate penalty. In simpler terms, there can be no justification for decreeing the killing of an offender who is not guilty of unlawful killing.¹⁹

5. Utility

The foregoing considerations on proportionality necessarily evoke an inquiry into the purpose or justification of capital punishment: of what use is capital punishment in combating armed robbery or in criminal jurisprudence generally? The Administration of Criminal Justice Act, 2015 (ACJA) has outlined the general objectives of punishment and sentencing. They are:

- (a) prevention, that is, the objective of persuading the convict to give up committing offence in the future, because the consequences of crime is unpleasant;

¹² Cap R11 LFN 2004.

¹³ Section 15. Curiously however, that distinction does not diminish the offence or the severity of punishment.

¹⁴ Constitution of the Federal Republic of Nigeria, 1999 (as Amended). s. 33 (1)

¹⁵ Merris Amos *Human Rights Law* (2nd edn, Oxford: Hart publishing Ltd, 2014) 89; Alistar Mowbray, *Cases and Materials on the European Convention on Human Rights* (London: Butterworths 2001).

¹⁶ *R (Razgar) v Secretary of State for the Home Department* (2004) UKHL 27, (2004) 2AC 368. Cited in Merris Amos, *ibid* 91.

¹⁷ *Tison v Arizona* 481 US 137 (1987).

¹⁸ 463 US 277, 292 (1983).

¹⁹ In *Coker v Georgia* 433 US 584 (1997) the US Supreme Court struck down a state legislation as unconstitutional because it imposed death penalty for the offence of rape. The apex court held that the punishment was excessive, in order words, disproportionate and unreasonable.

- (b) restraint, that is, the objective of keeping the convict from committing more offences by isolating him from society;
- (c) rehabilitation, that is the objective of providing the convict with treatment or training that will make him into a reformed citizen;
- (d) deterrence, that is, the objective of warning others not to commit offence by making an example of the convict;
- (e) education of the public, that is, the objective of making a clear distinction between good and bad conduct by punishing bad conduct;
- (f) retribution, that is, the objectives of giving the convict the punishment he deserves, and giving the society or the victim revenge; and
- (g) restitution, that is, the objective of compensating the victim of the offence.²⁰

Years before the passage of the Administration of Criminal Justice Act, Nwabueze, reflecting on the death penalty had noted that according to available data, American jurisprudence has always accepted deterrence, isolation of dangerous persons and rehabilitation as proper objectives of punishment, while conversely, rejecting retaliation, vengeance and retribution as intolerable aspirations for a government in a free society.²¹ Indeed, most penal scholars have condemned retribution as a penal objective.²² Further, the Eighth Amendment to the US Constitution was effected as a counter-measure to vengeance as a goal of punishment.²³

In an incisive study, Okagbue had noted that from available evidence, death penalty for the offence of murder has no deterrent advantage over life imprisonment. The author therefore concluded that it would also not have any deterrent advantage over life imprisonment in relation to drug offences, and by extension other offences.²⁴

It is worthy of note that, among all the penal objectives listed above, it is perhaps only retribution that can stand as a basis for imposing the death penalty, yet retribution stands discredited. Indeed, eminent judges and jurists have noted that capital punishment has no deterrent value, 'nor does it serve any permissible penal purpose more effectively than life imprisonment.'²⁵ Worse still, the finality and irreversibility of its execution totally obliterates the noble objective of rehabilitation.²⁶

6. Morality

The foregoing considerations provide ample basis for a moral objection to the death penalty. Simply put: it is morally reprehensible to impose so drastic and irreversible a punishment in that it serves no useful penal purpose, and is in fact destructive of some commendable penal objectives.²⁷ Nwabueze argues, and rightly in our view, that 'it is inhuman to terminate human existence by killing,' even if ordered as punishment for

²⁰ Administration of Criminal Justice Act 2015, section 401(2).

²¹ BO Nwabueze *The Presidential Constitution of Nigeria* (London: C Hurst & Co, 1982) 416.

²² Adedokun A Adeyemi, 'Sentencing and Probation' in *1992 Judicial Lectures: Continuing Education for the Judiciary* (MIT Professional Publishers Ltd on behalf of Nigeria Judicial institute, 1992) 174-187; FIE Ukattah, 'Sentencing and Probation' *1992 Judicial Lectures*, 188-202; Okonkwo Naish. 28-37.

²³ *ibid.*

²⁴ Isabella Okagbue, *The Death Penalty as an Effective Deterrent to Drug Abuse and Drug Trafficking: Myth or Reality?* (Lagos: Nigerian Institute of Advanced Legal Studies 1991) 23.

²⁵ *Furman v Georgia*; *State v Makwanyane*; Nwabueze (no. 17) 416; I Okagbue, *The Death Penalty As An Effective Deterrent To Drug Abuse And Drug Trafficking: Myth Or Reality?* (Lagos: Nigerian Institute of International Affairs, 1991); CO Okonkwo, *Okonkwo and Naish on Criminal Law in Nigeria* (2ndedn. Ibadan: Spectrum Books Ltd, 1980/2003 reprint) 28 – 42.

²⁶ Nwabueze (n. 17) 416. In *Furman v Georgia*, the dissenting Justices did not consider the issues of proportionality and penal utility, but preferred to treat them as irrelevant to the question of constitutionality.

²⁷ See Mr Justice Marshal's concurring opinion in *Furman v Georgia* (at Pp 331 – 332, 342-359) and dissent in *Gregg v Georgia* 'Death penalty is unconstitutional because it is excessive, and the American people will raise moral objection if they are fully informed of the underlying penal purpose.'

a crime.²⁸ Implicit in this assertion is the point that it is inhuman for the legislator to enact a law prescribing death penalty.

The moral objection to death penalty is further enhanced by the consideration of the possibility of error in the course of trial and/or sentencing. Perfection is a desirable attribute, but the sad reality is that no human institution or process, including the criminal justice system, can lay claim to infallibility.²⁹ In *Botu v State*³⁰ the appellant was a co-accused in a charge of armed robbery involving the stealing of a car belonging to PW2. Appellant was not arrested at the scene of the crime. In the course of their investigation, the police purported to carry out an identification parade in which they lined up some men and brought out the appellant to come and 'identify' which of them was his uncle. Appellant pointed at PW2 as his uncle. Afterwards the police told PW2 that appellant was one of the persons that robbed him of his car. With this dubious identification process, the trial court convicted the appellant and sentenced him to death! And the Court of Appeal upheld the judgment! On further appeal, the Supreme Court held, and rightly so, that the identification process was improper and unreliable and that accordingly, the constitutional presumption of innocence in favour of the accused was not effectively discharged by the prosecution, hence the judgment of the two courts below was overturned and appellant was discharged and acquitted. A similar scenario played out in *Arisa v State*.³¹ If the appellants in both instances did not have the means to pursue their respective cases up to the Supreme Court, they would each have been executed on an erroneous conviction. The number of erroneous convictions involving capital offences in the country is left to the imagination.

7. Conclusion

The Robbery and Firearms Act was enacted at a time when armed robbery was the most serious and prevalent violent crime in the country and understandably it provides very steep penalties for offences it created. A careful study of section 1 (2) however discloses that it is capable of leading to very bizarre results that mock the very idea of justice. Robbery is undeniably a very serious offence, However, any law that authorises the killing of an offender whose offence did not involve the deliberate killing of another person is definitely disproportionate, immoral and unjust. It is therefore recommended that the provision be amended to exclude the death penalty in cases in which the offence did not involve the deliberate or reckless killing of another person.

²⁸ Nwabueze (n. 17) 417.

²⁹ *Adegoke Motors v Adesanya* [1989] 3NWLR (pt 109) 250 'We are final not because we are infallible, rather we are infallible because we are final. Justices of the court are human beings capable of erring.' (Per Oputa JSC at 274 -275). This statement, though made in a civil proceeding, nonetheless holds true even in criminal proceedings involving questions of life and death.

³⁰ [2018] 3NWLR (pt. 1607) 410.

³¹ [2018] 11 NWLR (pt. 1631) 453.