

RETHINKING THE LAWS ON DEATH PENALTY, SUICIDE AND ATTEMPTED SUICIDE IN NIGERIA

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Abstract

The article critically examines the position of Nigerian laws on death penalty, suicide and attempted suicide. While there has been a robust increase in the number of laws sanctioning death penalty in the country, it is yet to be seen how they have effectively accomplished the primary objective of addressing or reversing the respective crimes for which they were intended. For instance, the crime of kidnapping now attracts a death penalty in some States of the federation, but kidnapping rate still continues unabated on daily basis from newspaper reports. Irrefutably, the Nigerian courts have affirmed the legality of death penalty. However, it is argued that since deterrence, which is one of the likely reasons for retaining the verdict under our statute books, is not serving any useful purpose, there is need for reforms regarding the imposition of death penalty in Nigeria. The article went further to define suicide as an intentional killing of oneself. Suicide is not only a public health issue but is also a personal tragedy that prematurely terminates the life of an individual and leaves consequential effects on the family, friends and the society generally. While suicide does not constitute an offence under Nigerian laws, it was discovered that an attempted suicide is criminalized. The article argues that this is rather faulty and lacks foundation in the principles of criminal law. Studies have associated suicide and attempted suicide with mental disorder. Thus, a person who attempts suicide should be entitled to a defence of insanity to escape from criminal liability. The article concluded that imposition of death penalty is not only a threat to the enjoyment of the right to life but also infringes on the right to dignity and freedom from torture, inhuman and degrading punishment. Thus, the article recommended, inter alia, that the Nigerian government and other relevant stakeholders should have a re-think on imposition of death penalty and the criminalization of attempted suicide in Nigeria. Rather than punishing a person who attempts suicide, the article further suggested that the government should provide care, treatment and rehabilitation that will transform the individual into a better person.

Keywords: Right to Life, Death Penalty, Suicide, Attempted Suicide, Defence of Insanity, the M’Naghten Rules

I. Introduction

A death penalty is a supreme sentence or penalty imposed as a form of punishment for the crime of murder and other capital offences. Capital punishment or death penalty has been a recognised form of punishment for certain crimes from time immemorial. Methods of its execution vary from one jurisdiction to other. They include firing squad, guillotine, beheading, hanging, lethal injection, stoning, crucifixion, etc.¹ The Roman Empire, for instance, imposed death punishment on a

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¹ Adeniyi Olatunbosun, *Death Penalty Jurisprudence in Nigeria* (Hiras Publications Ltd., 2019), 18-31.

variety of crimes. Jesus Christ was crucified on the cross by the Roman government in active connivance with the Jewish leaders for what was allegedly believed to be a crime of blasphemy.² Stephen was to follow suit a couple of years later.³

Followers of Christianity have equally laid claim to the validation of death sentence as a form of punishment in the biblical injunction that “whoso sheddeth man’s blood, by man shall his blood be shed.”⁴ Other biblical crimes which attracted the imposition of death penalty included idolatry,⁵ kidnapping,⁶ insolence to one’s parents⁷ and sexual offences.⁸ In some instances, the quality of evidence to be adduced before a death penalty could be secured in some offences was stipulated.⁹

The codification of death penalty in Nigeria is recognised under the 1999 Constitution (as amended)¹⁰ and in a number of other statutes. For instance, the Robbery and Firearms (Special Provisions) Act¹¹ stipulates death penalty for being in possession of a firearm or offensive weapon¹² during robbery.¹³ The Terrorism (Prevention) Act (as amended)¹⁴ also prescribes death sentence for acts of terrorism. The Administration of Criminal Justice Act, 2015 equally recognises death penalty by hanging the convict by the neck till he is dead or by lethal injection as a form of punishment for capital offenders.¹⁵ Some controversial bills aimed at regulating social

² *The Holy Bible*, Mark, Chapter 14: 63-64; John 10:33.

³ *Ibid*, Acts of the Apostles, Chapter 8: 9-14 and 54-58.

⁴ *Ibid*, Genesis, Chapter 9:6, King James Version.

⁵ *Ibid*, 1 Samuel, Chapter 28: 9.

⁶ *Ibid*, Exodus, Chapter 21: 16.

⁷ *Ibid*, Exodus, Chapter 21: 17.

⁸ *Ibid*, Leviticus, Chapters 18: 7-28 and 20:10.

⁹ *Ibid*, Numbers, Chapter 35: 30-31, King James Version, states: “[w]hoso killeth any person, the murderer shall be put to death by the mouth of witnesses: but one witness shall not testify against any person to cause him to die. Moreover ye shall take no satisfaction (ransom or compensation) for the life of a murderer, which is guilty of death: but he shall be surely put to death. ” (Words in bracket supplied).

¹⁰ See for example sections 33(1), 233(2)(d) and 241(1)(e) of the 1999 Constitution, which in no mistakable terms recognise the imposition of death penalty as a form of sentence or punishment by a court of law. It is therefore, submitted that if death penalty was not recognised by the Constitution, it would not have made provisions for appeals to the Supreme Court and Court of Appeal when the death sentence is imposed by the courts.

¹¹ Cap. R11, Vol. 14, Laws of the Federation of Nigeria, 2004.

¹² The Act defines “offensive weapon” to mean “any article (apart from a firearm) made or adapted for use for causing injury to the person or intended by the person having it for such use by him and it includes an air gun, 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,” *ibid*, section 11. In *Umoh Ekpo v. The State* (2018) LPELR-43843(SC) decided by the Supreme Court of Nigeria on 23rd February 2018, the offensive weapon used for the robbery operation was a pair of pliers.

¹³ The death sentence may be executed by hanging the convict by the neck till he dies or by causing him to suffer death by firing squad as may be determined by the Governor, *ibid*, section 1(2) and (3). As a matter of fact, it is immaterial whether or not such robbery attack resulted in the death of the victim- see *Francis Odili v. The State* (1977) All NLR 49; *Anthony Isibor v. The State* (2002) 2 SC (Pt. 2) 110.

¹⁴ Act No. 10 of 2011. See also Terrorism (Prevention) (Amendment) Act 2013 which amended section 1 of the principal Act to introduce a death penalty- section 2 thereof.

¹⁵ However, where the sentence of death was imposed upon a pregnant woman, the execution of the sentence shall be suspended until the baby is delivered and weaned. On the other hand, sentencing in the case of a child offender (i.e. a person who has not attained the age of eighteen years at the time the offence was committed) shall neither be recorded nor pronounced by the court, rather the court shall sentence the child-offender to a life imprisonment or any other suitable term as the court considers

media and hate speech in Nigeria are also proposing the penalty of death for the offenders.¹⁶ Similarly, some States recently have added kidnapping to the lists of offences that are punishable with death.¹⁷ In the northern States, which operates under the Sharia criminal legal jurisprudence, sexual offences attract death sentence.¹⁸

Various arguments have been advocated for the retention or abolition of death penalty in Nigeria, as shall be seen in the article. However, it shall be argued in this article that the continued retention of the punishment in our statute books does not merely offend the right to dignity of a person as it is inherently cruel, inhuman, gruesome and a degrading form of punishment but also violates some global human rights instruments.

On the other hand, suicide is a self-afflicted death. It is a deliberate act of terminating one's life either as a result of mental disorder, severe stress, or as a result of various motivations or other associated suicidal behavioural risk factors which could be social, cultural, religious, psychological, biological, or medical. According to a World Health Organisation report, an estimated 804,000 suicide deaths occurred globally in year 2012, accounting for a yearly global age-standardised suicide rate of 11.4 per 100,000 population (i.e. 15 for males and 8 for females).¹⁹ In Nigeria, suicide or suicidal attempts have been prevalence. The said WHO report stated that the number of suicides in Nigeria for all ages in that year stood at 7238,²⁰ ranking Nigeria the 10th position in Africa and the 67th position in the world.²¹ However, this figure may be under reported due to the sensitivity of the issue and the accompanying

expedient. See sections 402, 404 and 405 of the Act.

¹⁶ Aside from the Bill for an Act to Provide for the Prohibition of Hate Speeches and for other Related Matters (a.k.a. the hate speech bill), the other bill is the Protection from Internet Falsehood and manipulation Bill 2019, which seeks to control messages that are posted on the internet. As at the time of writing this article, the controversial bills were facing stiff oppositions from some lawmakers, members of the civil society and the general public. See generally Sunday Aborisade, 'No going back on hate speech, social media bills-APC Senators.' *The Punch* (Lagos, 16 November, 2019). Available at <<https://punchng.com/no-going-back-on-hate-speech-social-media-bills-apc-senators/>> accessed on 17 November 2019. Section 4(1) of the Bill defines what constitutes a "hate speech," while subsection (2) thereof provides that "[a]ny person who commits an offence under this section shall be liable to life imprisonment and where the act causes any loss of life, the person shall be punished with death by hanging."

¹⁷ The States that have imposed death penalty regarding kidnapping-related crimes include, Akwa Ibom, Abia, Anambra, Bayelsa, Bauchi, Cross River, Enugu, Imo, Kogi, Lagos, Ogun, Ondo, Oyo and Rivers. See Robert Egbe, 'Kidnapping: Is Death Penalty the Answer?' *The Nations* (Lagos, 28 March 2017). Available at <<https://thenationonline.net/kidnapping-death-penalty-answer/>> accessed on 23 September 2019. Zamfara State has also indicated interest in making banditry and kidnapping capital offences. There is a bill to this effect currently pending before the Zamfara State House of Assembly at the time of writing this article. See News Agency of Nigeria, 'Zamfara Assembly to make banditry, kidnapping capital offences.' *The Punch*. Available at <<https://punchng.com/zamfara-assembly-to-make-banditry-kidnapping-capital-offence/>> accessed on 23 October 2019.

¹⁸ See generally, Cornell Center on the Death Penalty Worldwide, 'Death Penalty Database: Nigeria.' Available at <<http://deathpenaltyworldwide.org/country-search-post.cfm?country=Nigeria>> accessed on 23 September 2019. See also Oluwatoyin Badejogbin, "Onuoha Kalu v. The State and Flaws in Nigeria's Death Penalty Jurisprudence." (2018) 18 *African Human Rights Law Journal*, p. 554.

¹⁹ See World Health Organisation, *Preventing Suicide: A Global Imperative* (Luxembourg: World Health Organisation, 2014), p.7.

²⁰ *Ibid*, p. 85.

²¹ Chioma Obinna and Gabriel Olawale, 'More Nigerians to die by suicide if...' *Vanguard* (Lagos, 21 May 2019). Available at <<https://vanguardngr.com/2019/05/more-nigerians-to-die-by-suicide-if/>> accessed on 29 July 2019.

stigmatisation. Stigmatisation against suicide may have its foundation primarily in religious and cultural sentiments.

For every suicide, there are many more people who attempt suicide yearly. Though Nigerian laws do not punish suicide, yet they criminalise attempted suicide. For instance, in 2017, one Ifeanyi Ugokwe who had made fruitless attempts to secure a gainful employment jumped into the lagoon but was rescued by some fishermen who handed him over to the police. He was detained in a police cell and subsequently arraigned before a Magistrate's Court on a charge of attempted suicide. While in prison custody pending the perfection of his bail, his defence lawyer later provided a guarantor who undertook to care for his welfare and the case was struck out.²²

Similarly, in July 2018, a 27 year old unemployed man was allegedly charged before Igbosere Magistrate's court in Lagos on a two counts charge of attempting to commit suicide with a rope tied to his neck on two respective occasions. He pleaded guilty to the charge.²³ Normally, attempted suicide carries a penalty of up to one year in jail. Though convictions are rare and there is dearth of reported cases on the subject in Nigeria as most Magistrates' courts have shown little appetite for conviction of attempted suicide survivors, it shall be argued, nonetheless in this article, that it is time that attempted suicide is decriminalised in Nigeria.

II. Jurisprudence on the Constitutionality of Death Penalty in Nigeria

This discussion would be started from the position of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which has been reputed as the "Nigerian Grundnorm."²⁴ Admittedly, section 33(1) of the 1999 Constitution provides for the right to life in qualified terms. It declares that every person has a right to life and that no person shall be deprived deliberately of this inalienable right unless such is done in the execution of a verdict pronounced by the court of law regarding a criminal offence of which the person had been found guilty in Nigeria. The qualified nature of the constitutionally guaranteed right to life under the Nigerian Constitution became a central issue before the Nigerian Supreme Court in *Onuoha Kalu v. State*,²⁵ a case which itself also engenders the debate regarding the retention or abolition of death sentence in Nigeria.

Briefly, the facts of the case were that the appellant on or about 24 August 1981 unlawfully stabbed the deceased, one Agbai Ezikpe, to death with the broken end of a star larger bottle in the neck in the presence of witnesses who also testified. The deceased was rushed to the hospital where he died a few minutes later from the

²² Stephanie Busari, 'Locked Up For Trying to Take His Own Life, in a Country Where It's a Crime to Attempt Suicide.' *CNN* (30 December 2018). Available at <<https://cnn.com/2018/12/30/health/imprisoned-suicide-illegal-nigeria-intl/index.html>> accessed on 22 September 2019.

²³ Paul Iyoghojie, 'Man Sent to Prison over Attempt to Commit Suicide.' *PM News* (Lagos, 4 July 2018). Available at <<https://www.pmnewsnigeria.com/2018/07/04/man-sent-to-prison-over-attempt-to-commit-suicide/>>. Accessed on 22 September 2019.

²⁴ For a general discussion on the subject of Nigerian grundnorm, see Kayode Eso, *Nigerian Grundnorm* (Idigbe Memorial Lecture Series, Lagos: Nigerian Law Publications Ltd., 1986).

²⁵ (1998) 12 SCNJ 1 at 30, 37.

stab injuries. The appellant however denied the charge. His defence was that he returned from a tour the previous day to learn that the deceased had raped the appellant's sister in his room and that he, the appellant, reported the incident to the deceased's brother. According to the appellant, on the said 24 August 1981 while he and his comrades were discussing how to handle the alleged criminal conduct of the deceased, they heard some shouting outside. On rushing out to see what was happening, they saw the deceased lying down in a pool of blood. At the end of the trial, the appellant was found guilty, convicted and a mandatory penalty of death was imposed on him. His appeal to the Court of Appeal was dismissed.

On a subsequent appeal to the Nigerian Supreme Court, the vital question before the court, was whether the statutory provision which prescribed a death penalty for the offence of murder²⁶ was not inconsistent with section 31(1)(a) of the erstwhile 1979 Constitution²⁷ and therefore, unconstitutional, invalid, null and void and of no legal effect. In answering this sensitive question, the Nigerian apex court admitted that though the Nigerian Constitution guarantees and protects the right to life yet the sentence of death penalty in criminal cases by a competent court of law was constitutionally permissible having regard to the qualified nature of the right as enshrined in our Constitution.²⁸

Unfortunately, the hard judicial stance of the Nigerian courts on the legality of the imposition of death sentence as a form of punishment for the offence of murder has not really changed several years after the decision in the *Onuoha Kalu* case as was revealed in a later case of *Yusuf v. State*.²⁹ In his contribution to the judgment in the *Yusuf* case, Agube, JCA bluntly stated thus:

It is disheartening that in this 21st Century, persons of the appellant's ilk can still be engaged in such nefarious and primitive acts of mindless and dastardly termination of an innocent girl's life just for filthy lucre, in this case, money. This is a classic case for those religiously and feverishly advocating for the abolition of death penalty in this country; which for some of us, is not only untimely and uncalled for in our present level of civilization, social condition and development. Can any person in his right senses and possessed of the milk of humaneness, under the guise of human rights advocacy, condone this wanton killing of this innocent girl...? I think not. Surely the spirit of this unfortunate and harmless angel whose life has been prematurely terminated...will not rest until her blood and gruesome murder which are now crying to high heavens have been avenged by the

²⁶ Section 319 (1) of the Criminal Code, Cap. 31, Laws of Lagos State of Nigeria 1973, which is also *impari materia* with section 319 (1) of the Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria, 2004.

²⁷ The said section is identical in wordings with the extant provisions of section 33 of the 1999 Constitution.

²⁸ *Onuoha Kalu v. State*, *op. cit.*, p. 30. See also *Okoro v. State* (1998) 12 SCNJ 84 *Joseph Amoshima v. The State* (2011) 14 NWLR (Pt. 1268) 530; *Aminu Tanko v. The State* (2009) 1-2 SC (Pt. 1) 198.

²⁹(2012) All FWLR (Pt. 641) 1478.

instrumentality of law....The appellant who has connived with his other confederate...must not only incur the wrath of God, but must pay the supreme price of death under the laws of the land for his impunity and heartless act.³⁰

The posture of the learned Justice of the Court of Appeal, Honourable Justice Agube, in the *Yusuf* case is a vivid reminder of the discussion between God and Cain in the outskirts of the Garden of Eden after the latter had murdered his brother Abel. In the biblical account, God told Cain that “the voice of thy brother’s blood crieth unto me from the ground. And now art thou cursed from the earth, which hath opened her mouth to receive thy brother’s blood from thy hand.” Though God’s judgment upon Cain was a mere “deportation” order and not an express death penalty, yet in a subsequent Noahic covenant,³¹ God recommended death penalty for capital offences.³² This divine injunction was later recognised and incorporated into the Mosaic Law for both human and animal offenders.³³

a. Arguments for and Against the Retention of Death Penalty in Nigeria

Olatunbosun³⁴ has traced the origin of public debate on imposition of death penalty in Nigeria to the successful diplomatic exploit Nigeria made when the country’s plea with Libya that the death sentence imposed on a Nigerian citizen, Nathaniel Jackson Ikpato Notibo, and three Ghanaians for the murder of a Libyan be substituted for prison terms yielded a positive result from the Libyan authorities.³⁵ This diplomatic exploit later provoked a public debate in January 2003 among Human Rights groups over the continued retention of death penalty in our statute books.³⁶ There have been various arguments and opinions for and against imposition of death penalty. Some have argued that death penalty can serve as deterrence to other intended criminals from venturing into committing crimes worthy of death penalty.

The advocates of death penalty have further canvassed the argument that imposition of death penalty would not only seek justice for the victim of the crime of murder but would also help in minimising crime rates in the society. Extending the frontiers of the contention further, the proponents of death penalty have submitted that the punishment is not necessarily a revenge or “an eye for an eye,”³⁷ rather it amounts to terminating a life that “has no value for other human lives, so that if one cannot value the life of another human being, then one’s own life has no value.”³⁸ The necessary import one could derive from such arguments is that imposing a death

³⁰ *Ibid*, at pp. 1511-1512.

³¹ *The Holy Bible*, Genesis, Chapter 4: 10-11.

³² *Ibid*, Genesis, Chapter 9:6.

³³ *Ibid*, Exodus, Chapter 21:14, 29; Chapter 22: 18-20; Chapter 35: 2; Leviticus Chapter 20:10; Leviticus 24:17; Deuteronomy Chapter 13:6-9; Chapter 17:12; Chapter 21:18-22.

³⁴ Adeniyi Olatunbosun, *Death Penalty Jurisprudence in Nigeria*, *op. cit.*

³⁵ *Ibid*, p. 183.

³⁶ *Ibid*. See also Francis Ogunbowale, ‘Nigeria: Agenda for the Coalition of Death Penalty,’ *All Africa* (11 March 2003). Available at <<https://allafrica.com/stories/200303110072.html>> accessed on 31 July 2019.

³⁷ *The Holy Bible*, Leviticus 24:20; Revelation 13: 10.

penalty on a murderer is indeed a “favour to the society,” justice to the victim of crime, his family and a fulfilment of divine injunction.³⁹

On the other hand, opponents of death penalty have doubted the extent to which the imposition of death sentence has served as deterrence to the members of the society who may wish to commit similar crimes as canvassed by advocates of death penalty. In this regard, Aguda, using the case of armed robbery which is one of the criminal offences that attracts a death penalty reasoned thus:

Now under extreme caution it may be said that it is difficult for anyone to say conclusively whether public executions have had any marked influence on incidents of armed robbery. One thing, however, which is clear, is that, in spite of the public executions of armed robbers which have been going on for some time now; the crime still continues.⁴⁰

Another argument against death penalty is that it is cruel, barbaric and amounts to a grave violation of the constitutionally guaranteed right of dignity of human person, which *inter alia*, frowns against subjecting a person to torture or to inhuman and degrading treatment.⁴¹ This position was strongly canvassed by the appellant’s learned counsel in *Onuoha Kalu v. The State*,⁴² where the Nigerian Supreme Court unfortunately established that death penalty did not breach the rights to life and human dignity.⁴³ On the contrary, in the Tanzanian case of *Republic v. Mbushuu*,⁴⁴ the Tanzanian High Court did not hesitate to maintain that death penalty was intrinsically cruel, inhuman and amounted to a degrading punishment as the process of execution by hanging was on the whole horrific, sordid, debasing and generally brutalising. The court accordingly held that death penalty was an affront to the provisions of Article 13(6)(e) of the Constitution of the United Republic of Tanzania.⁴⁵

A third argument against death penalty is that it is irreversible once executed and that if the sentence is wrongly carried out on an innocent convict it would do more harm than good to the individual, the family and the society. This is, conceivably anchored on the trite principle of law that it is better to allow nine guilty accused persons to go scot free than to subject an innocent person to punishment. The

³⁸ Adeniyi Olatunbosun, *Death Penalty Jurisprudence in Nigeria*, 202-203. A learned author has also expressed the view that the “purpose of capital punishment, though it may be partly deterrent, contains also the idea that he who kills must be killed.” See Cyprian Okonkwo, *Criminal Law in Nigeria* (Sweet & Maxwell, Second Edition, 1980), p. 28.

³⁹ Adeniyi Olatunbosun, 203.

⁴⁰ Akinola Aguda, ‘Law as a Means of Social Hygiene’ in *Judiciary in the Government of Nigeria* (New Horn Press, 1983), p. 165, quoted in Akin Ibidapo-Obe, *Essays on Human Rights Law in Nigeria* (Concept Publications Limited, 2005), 32-33.

⁴¹ See generally the 1999 Constitution, section 34(1)(a).

⁴² (1998) 12 SCNJ 1.

⁴³ *Ibid*, p. 32.

⁴⁴ (1994) TLR 146.

⁴⁵ Article 13 (6) (e) of the Tanzania Constitution is similar, though of different wordings, to section 34(1)(a) of the 1999 Nigerian Constitution. The former states: “It is prohibited to torture a person, to subject a person to inhuman punishment or to degrading punishment.”

Nigerian case of *Aliyu Bello & 13 others v. Attorney- General of Oyo State*⁴⁶ readily comes to mind. In that case, an accused person who was found guilty of the offence of armed robbery lodged an appeal before the Nigerian Supreme Court. However, before his appeal was heard and determined by the apex court, he was hastily hanged while in prison. The apex court, in a subsequent action instituted by the deceased's family, strongly castigated the State Government and awarded monetary compensation to the family. In the opinion of the court, the hurried execution of the deceased was a "reckless disregard for the life and liberty of the subject and the principle of the rule of law"⁴⁷ and therefore was "unconstitutional and unlawful."⁴⁸ But painfully, with all the judicial rhetoric, the life of the convict could not be restored.

This third argument for the abolition of death penalty also finds support in the recent release of an 86 years old death row inmate, Azubuije Ehirio, and his two other family members from the Enugu Maximum Prison by the Presidential Committee on Prisons Reform and Decongestion. The convicts were sentenced to death by hanging by an Abia State High Court in 2005. Due to financial constraints, they could not appeal against the judgment. According to Ehirio, he had a land dispute with the complainant and around the same time, the complainant's son was killed by armed robbers. Based on the circumstances, the convicts were arrested and charged to the court on trumped murder charge. The Presidential Committee after listening to the circumstances that resulted in the arraignment, incarceration and subsequent conviction of the inmates was convinced that there was need to set them free. It accordingly released them unconditionally.⁴⁹ The question is, had the inmates been executed fourteen years earlier when their sentence was passed, would the committee have had the opportunity of reviewing their case?

b. Balancing the Arguments on Death Penalty in Nigeria

Balancing the arguments for and against the imposition of death penalty *vis a vis* the above cited cases of Aliyu Bello and Azubuije Ehirio, would make one readily tilt in favour of the abolition of death penalty in Nigeria. It is the view of the present authors that death penalty is not only a limitation to the enjoyment of the right to life, but it also terminates the enjoyment of other constitutionally guaranteed rights, including the right to human dignity and protection against cruel, inhuman and degrading treatment. It is a known fact that death penalty has some inherent ingredients of torture. From the time a sentence of death is passed on a criminal till when the execution is carried out, the convict would be subjected to severe mental pain, agony and suffering.⁵⁰

⁴⁶(1986) 5 NWLR (Pt. 45) 828.

⁴⁷*Ibid*, at 860.

⁴⁸*Ibid*, at 851.

⁴⁹ See NAN, '86-Year-Old Death Row Inmate, Son, Cousin Regain Freedom.' *The Punch* (Lagos, 3 July 2019). Available at <<https://punchng.com/86-year-old-death-row-inmate-son-cousin-regain-freedom/>>. Accessed on 4 July 2019.

⁵⁰ See the United Nations General Assembly (UNGA) Resolution 3542 (XXX) on the Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 9 December, 1975, which recognises both mental and physical pain or

The historic decision of the Constitutional Court of South Africa in *State v. Makwanyane & Anor*⁵¹ is very instructive in this area. The case involved two accused who were convicted for murder and sentenced to death. Their appeal to the Appellate Division of the Supreme Court was unsuccessful as the court expressed the view that the circumstances of the murder warranted that the accused should be punished with the sentence of death. On a further appeal to the Constitutional Court of South Africa, it was ruled that capital punishment was a violation of the guaranteed right against cruel, inhuman and degrading treatment contemplated of under the South African Constitution. According to the court,

Death is the most extreme form to which a convicted criminal can be subjected. Its execution is final and irrevocable. It puts an end not only to the right to life itself, but to all other personal rights which had vested in the deceased under Chapter Three of the Constitution. It leaves nothing except the memory in others of what has been and the property that passes to the deceased's heirs. In the ordinary meaning of the words, the death sentence is undoubtedly a cruel punishment. Once sentenced, the prisoner waits on death row in the company of other prisoners under sentence of death, for the processes of their appeals and the procedures for clemency to be carried out. Throughout this period, those who remain on death row are uncertain of their fate, not knowing whether they will ultimately be reprieved or taken to the gallows. Death is a cruel penalty and the legal processes which necessarily involve waiting in uncertainty for the sentence to be set aside or carried out, add to the cruelty. It is also an inhuman punishment for it involves, by its very nature, a denial of the executed person's humanity, and it is degrading because it strips the convicted person of all dignity and treats him or her as an object to be eliminated by the state.⁵²

Indubitably, the need for abolition of death penalty in Nigeria is long overdue. However, notwithstanding how laudable the advocacy for the elimination of death penalty may appear, it is the candid view of the present authors that such may not bring about the much needed change except both the legislature and the executive arms of the government exercise a bold political will and determination to amend the 1999 Constitution and other relevant laws which still harbour death penalty as a form of punishment in relation to capital offences. The judiciary must also be bold enough to engage in judicial activism in their interpretation of the laws as seen in other climes.

suffering as a form of torture.

⁵¹ Case No. CCT/3/94 decided on 6 June 1995; (1995) ZACC 3; (1995) (6) BSCLR 665; (1996) 2 CHRLD 164. Judgment in the case is available at <<http://www.saflii.org/za/cases/ZACC/1995/3.html>> accessed on 1 August 2019.

⁵² *Ibid.*

III. Suicide Debate: Historical Background and Contributory Factors

Suicide is a global occurrence and has been reported by the World Health Organisation to be the second leading cause of death among 15-29 year olds worldwide. Essentially, the report stated that 79% of suicide took place in low and middle income countries in 2016 and that the phenomenon accounted for 1.4% of all deaths globally, making it the 18th leading cause of death in 2016. Putting it in more concrete terms, it is estimated that over 800,000 people die as a result of suicide annually⁵³ and Nigeria is among the leading countries that are prone to suicide.⁵⁴ Over the years, it was commonly thought that cases of suicide was prevalent among the older people, but as recent occurrences have shown, this trend has moved significantly towards the younger generations.⁵⁵ Studies have estimated that 9.5% of all unnatural deaths in persons younger than 45 years of age were attributed to suicide.⁵⁶ Almost on daily basis, cases of either suicide or attempted suicide are reported in our local and national newspapers.⁵⁷

The term “suicide” originated from the Greek word, *suicidium*, meaning “deliberate killing of oneself.”⁵⁸ It has also been defined as “the human act of self-inflicted, self-intentioned death.”⁵⁹ In the view of Markson, suicide is “the intentional, voluntary, unaccidental act of a sane man” which culminates in his own demise.⁶⁰ The term has been judicially defined as “an act of self-killing or self-destruction, an act of terminating one’s own life by one’s own act and without the aid or assistance of any other human agency.”⁶¹ Lubaale, relying on Schebusch, has also described suicide to include “a wide range of self-destructive or self-damaging acts in which people engage, owing to varying degrees of level of distress, psychopathology” with the consciousness or expectations of the harmful results of such suicidal behaviour.⁶² The

⁵³World Health Organisation, “Suicide Data across the World-2016.” Available at https://www.who.int/mental_health/prevention/suicide/suicideprevent/en/. Accessed on 29 July 2019.

⁵⁴ Chioma Obinna and Gabriel Olawale, ‘More Nigerians to die by suicide if...’ *Vanguard* (Lagos, 21 May 2019). Available at <<https://www.vanguardngr.com/2019/05/more-nigerians-to-die-by-suicide-if/>>. Accessed on 29 July 2019.

⁵⁵ See for instance, Chukwuma Muanya and Stanley Akpunou and Adaku Onyenucheya, ‘Nigeria: Addressing Rising Cases of Suicide Among Teenagers,’ *All Africa* (21 May 2019). Available at <<https://allafrica.com/stories/201905210071.html>> accessed on 29 July 2019.

⁵⁶ Soornarain S. Naidoo and others, ‘Unmasking Depression in Persons Attempting Suicide,’ (2015) 57(2) *South African Family Practice*, 83-87. Available at <<https://doi.org/10.1080/20786190.2014.1002219>> accessed on 23 September 2019.

⁵⁷ See for example, Muneer Yaqub, ‘Suicide by ‘Sniper’: Insecticide Turns Popular Choice for Suicidal Nigerians,’ *Sahara Reporters*. Available at <<http://saharareporters.com/2019/03/21/suicide-sniper-insecticide-turns-popular-choice-suicidal-nigerians>> accessed on 24 September 2019.

⁵⁸ See, ‘Origin and Meaning of Suicide.’ Available at <<https://www.etymonline.com/word/suicide>> accessed on 19 September 2019.

⁵⁹ Antoon A. Leenaars, ‘Suicide and Human Rights: A Suicidologist’s Perspective,’ (2003) 6(2) *Health and Human Rights*, 129.

⁶⁰ See David S. Markson, ‘The Punishment of Suicide-A Need for Change,’ (1969) 14(3) *Villanova Law Review*, p. 464. Available <<http://digitalcommons.law.villanova.edu/vlr/vol14/iss3/5>> accessed on 23 September 2019.

⁶¹ See *Maruti Shripati Dubal v. State of Maharashtra* 1987 (1) BomCR 499, para, 16, (1986) 88 BOMLR 589, decided by the Bombay High Court on 25 September 1986. Available at <<http://indiankanoon.org/doc/490515/>> accessed on 21 July 2019

⁶² Emma Charlene Lubaale, ‘The Crime of Attempted Suicide in Uganda: The Need for Reforms to the Law,’ [2017] (4) (1) *Journal of Law, Society and Development*, 3.

implication of the Lubaale's definition is that suicide is not only an act of knowingly terminating one's life but it also accentuates the correlation between suicide and mental disorder. This makes suicidal behaviour a complex problem that cannot completely be tackled through criminalisation and penalisation.⁶³

As a matter of fact, the attitude of ending one's life through suicide is not a strange phenomenon or a process unknown to human history. It cuts across myriad of religions, culture, race and societal strata. The Christian Bible does not explicitly forbid suicide, though the idea is objectively considered by Christians as a grave violation of the Sixth Commandment, "thou shalt not kill."⁶⁴ Cases of people who committed suicide are however recorded both under the Old Testament and the New Testament of the Bible. Such Bible characters include Abimelech,⁶⁵ Sampson,⁶⁶ Saul and his armourbearer,⁶⁷ Ahithophel,⁶⁸ Zimri,⁶⁹ and Judas Iscariot.⁷⁰ The Bible also recorded an attempted suicide case by a jailer.⁷¹ On the contrary, the Muslim Quran expressly prohibits suicide. In this regard, a passage in the Quran admonishes, "[a]nd do not kill yourselves, surely God is most merciful to you."⁷² The condemnation of suicide is also recorded in statements of Hadith such as the one narrated by Abu Huraira, "[t]he Prophet said, he who commits suicide by throttling shall keep on throttling himself in the hell fire (forever) and he who commits suicide by stabbing himself shall keep on stabbing himself in the hell fire."⁷³

Cases of suicide can also be found in some literature books. Achebe gives an account of how his main protagonist, Okonkwo, killed a messenger and resorted to hang himself on a tree after his failed attempts to rouse his clansmen to act in unity in the face of betrayal and brazen disregards of the Umuofia's communal traditions and taboos by the colonial government and the new religion (Christian church).⁷⁴ Though such unfortunate incident may be regarded as a personal tragedy of Okonkwo, but it also reflected the attitude of the communal people regarding the concept of "self-killing." Obierika, a close friend of the deceased, summed it up in his communication with the District Commissioner:

It is against our custom....It is an abomination for a man to take his own life. It is an offence against the Earth, and a man who commits it will not be buried by his clansmen. His body is evil, and only strangers may touch it. That is why we ask your people to bring him down, because

See also L. Schlebusch, *Suicidal Behaviour in South Africa*, (Pietermaritzburg: University of Kwazulu-Natal Press.2005), 179.

⁶³ Emma Charlene Lubaale, 'The Crime of Attempted Suicide in Uganda: The Need for Reforms to the Law,' *ibid*, at 7.

⁶⁴ *The Holy Bible*, Exodus 20: 13, KJV.

⁶⁵ *Ibid*, Judges 9:53-54.

⁶⁶ *Ibid*, Judges 16:26-31.

⁶⁷ *Ibid*, 1 Samuel 31: 4-5.

⁶⁸ *Ibid*, 2 Samuel 17: 23.

⁶⁹ *Ibid*, 1 Kings 16: 18.

⁷⁰ *Ibid*, Matthew 27: 3-5.

⁷¹ *Ibid*, Acts of the Apostles 16: 27-28.

⁷² *The Holy Quran*, Sura 4:29.

⁷³ Sahih al-Bukhari, 2:23:446.

⁷⁴ Chinua Achebe, *Things Fall Apart* (Heinemann Educational Books, 1981, Reprinted), 140-145.

you are strangers....We shall pay your men to do it. When he has been buried we will then do our duty by him. We shall make sacrifices to cleanse the desecrated land....That man was one of the greatest men in Umuofia. You drove him to kill himself; and now he will be buried like a dog....⁷⁵

Shakespearean plays also illustrated some instances of “self-murder.” Such plays could be found in *Romeo and Juliet*, where the duo used their suicidal deaths in unifying their feuding families.⁷⁶ Similarly, in *Anthony and Cleopatra*, after being misinformed of the demise of his lover, Cleopatra, Mark Anthony stabbed himself to death with his sword.⁷⁷ Cleopatra subsequently committed suicide rather than be subjected to humiliation by the triumphant Octavian’s forces. Their deaths ultimately brought peace to the Roman Empire.⁷⁸

Muanya *et. al*, have admitted that while there exist a connection between suicide and mental disorder or depression in developed countries of the world, many suicides cases also occur due to inability to cope with stresses of life such as financial challenges, chronic ailment, and relationship issues.⁷⁹ In addition, other factors that contribute to suicide cases include socio-economic factor, situational factor, religious factor, environmental factor, self-induced or drug-related factor, the need to avoid humiliating and undignified situations, or the need to justify or achieve a cause whether social, religious or political, to mention but a few.

Psychoanalytic theories and studies have also explained the possible reasons why people resort to suicidal behaviours. One of the first proponents of this concept was Sigmund Freud. He posited that suicide was propelled by an inherent death instinct in man “as the goal of all life is death.” His further proposition that “suicide was based on harboured guilt feelings and inwardly directed violence in an emotionally arrested or immature individual has been” replicated by many contemporary psychiatrists.⁸⁰

From the psychological perspective, Durkheim has contended that the more socially integrated and connected to the society a person is, the less likelihood it is for the individual to commit suicide and that where such social assimilation diminishes, there is a possibility for the individual to commit suicide. He consequently classified suicide into four groups based on the connection existing between the society and the individual. First, egoistic suicide or suicide of a self-centred individual, which occurs when an individual feels completely disconnected from the society. Thus, when a person’s bond or ties with the society is undermined, the individual may be vulnerable to this type of suicide as he focuses more on himself and lacks the necessary concern

⁷⁵ *Ibid*, at 147.

⁷⁶ See William Shakespeare, *Romeo and Juliet*, Act 5 scene 3, lines 111-112, 171 and 309.

⁷⁷ See generally, William Shakespeare, *Anthony and Cleopatra*, Act 4, scene 15-Act 5, scene 1.

⁷⁸ *Ibid*, Act 5, scene 2.

⁷⁹ See Chukwuma Muanya and Stanley Akpunou and Adaku Onyenucheya, ‘Nigeria: Addressing Rising Cases of Suicide Among Teenagers,’ *All Africa* (21 May 2019). Available at <<https://allafrica.com/stories/201905210071.html>> accessed on 29 July 2019.

⁸⁰ See David S. Markson, ‘The Punishment of Suicide-A Need for Change,’ *op. cit.* at 469.

for the community.⁸¹ The second type is altruistic suicide that occurs when an individual feels an undue sense of commitment or strong obligation to the community or a cause. In such a situation, the person may be compelled by such feelings or force to kill himself for the benefit or cause of the society.⁸²

Durkheim also identified fatalistic suicide as another type of suicide. This occurs where a person chooses to die rather than continue to suffer in a tyrannical or suppressive condition.⁸³ The fourth category is anomic suicide. This type of suicide is triggered off by the failure of the society to manage and control the behaviour of individuals. This may happen during periods of severe socio-economic and political disorder which may lead to serious changes in the society. In such circumstances, an individual may feel confused, withdrawn and unable to acclimatise when the society changes and thereby resorting to committing suicide.⁸⁴ Although Durkheim's categorisations may not necessarily be exhaustive regarding reasons why people commit suicide, they nonetheless provide some additional guides on the factors that encourage it.

a. Nigerian Laws on Suicide and Attempted Suicide

Notwithstanding the factors that may prompt a person to commit suicide or attempt a suicide, the fact still remains that in Nigeria, under the Criminal Code Act⁸⁵ and the Penal Code, the crime of suicide is neither defined nor penalised though these laws criminalise attempted suicide, abetment or aiding of the commission of suicide. According to the Criminal Code, any person who procures another to kill himself and consequently induces him to do so is guilty of a felony and liable upon conviction to a life imprisonment.⁸⁶ An attempt to commit suicide is considered as a misdemeanour and attracts an imprisonment for one year under the Criminal Code.⁸⁷

On the other hand, the Penal Code also makes provisions for various categories of abetment of suicide and attempted suicide. The Penal Code makes it an offence punishable with death for any person to abet the commission of suicide by a child, an insane person, an idiot or a person under the influence of intoxication.⁸⁸ Where the person assisted to commit suicide was neither a child nor an insane person, the person who assisted in the commission of such suicide shall be liable to an imprisonment which may extend to ten years as well as become liable to payment of a fine.⁸⁹ With regard to attempted suicide, the Penal Code prescribes an imprisonment term of more

⁸¹See George Ritzer, 'Theory of Suicide by Emile Durkheim.' Available at <<http://socialscience.blogspot.com/2015/03/theory-of-suicide-by-emile-durkheim.html?m=1>> accessed on 3 September 2019.

⁸² *Ibid.*

⁸³ *Ibid.* It may be recalled that the popular Jasmine revolution in Tunisia in 2010 during the Arab spring was triggered off when one Mohammed Bouazizi, an unemployed street trader set himself ablaze to complain against the arbitrary seizure of his vegetable stand by the police for failure to obtain a permit- See The Editors, Encyclopaedia Britannica, 'Jasmine Revolution: Tunisian History.' Available at <<https://www.britannica.com/event/Jasmine-Revolution>> accessed on 7 December 2019.

⁸⁴ George Ritzer, 'Theory of Suicide by Emile Durkheim,' *ibid.*

⁸⁵ Cap. C38, Laws of the Federation of Nigeria 2004.

⁸⁶ *Ibid.*, section 326.

⁸⁷ *Ibid.*, section 327.

⁸⁸ See Penal Code, section 227.

⁸⁹ *Ibid.*, section 228.

than one year with a fine.⁹⁰

The Penal Code and the Criminal Code have defined what constitute an attempt to commit an offence. According to the Penal Code,

whoever attempts to commit an offence punishable with imprisonment or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence shall, where no express provision is made ...for the time being in force for the punishment of such attempt, be punished with imprisonment for a term which may extend to one half of the longest term provided for that offence or with such fine as is provided for the offence....⁹¹

The Criminal Code is more forthright as it attempted to codify some of the Common Law principles of crime.⁹² According to the Code, an attempt to commit offences occur

when a person intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment manifests his intension by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.⁹³

From the wordings of the two penal laws, it is obvious that for a person to be liable for a criminal attempt, the offence for which he is alleged to have attempted to commit must be punishable under the law. Thus, the rationality for rendering attempted suicide as an offence under our criminal legal jurisprudence is seriously questioned.⁹⁴ It is contended that since suicide itself has not been criminalised in our statute books, for the possible reason that the perpetrator or victim of the crime is dead and cannot be reached for criminal prosecution, it stands to reason therefore, that a person should not be held criminally liable for an attempt if the “conduct they attempt to engage in does not constitute a crime.” On the basis of this statutory ambiguity, it follows that an attempt to commit suicide under the Nigerian law is faulty and lacks proper basis in the principles of criminal law.⁹⁵

b. Attempted Suicide and the Defence of Insanity

This section of the work focuses on discovering the effect of mental illness or

⁹⁰ *Ibid*, section 231.

⁹¹ *Ibid*, section 95.

⁹² Peter Ocheme, *The Nigerian Criminal Law*, (Second Edition, Liberty Publications Ltd., 2008), 66.

⁹³ Criminal Code, *op. cit.*, section 4.

⁹⁴ Cyprian Okonkwo, *Criminal Law in Nigeria*, (Second Edition (Reprint), Spectrum Books Limited, 2005), 184.

⁹⁵ See Emma Charlene Lubaale, ‘The Crime of Attempted Suicide in Uganda: The Need for Reforms to the Law,’ *op. cit* at 9-10; C. R. Snyman, *Criminal Law*, (Durban, Johannesburg and Cape Town: LexisNexis, 2014), 283, 285; J. Burchell, *Principles of Criminal Law*, (Cape Town: Juta, 2013), 535-553.

mental defect on criminal accountability of a defendant who is charged with the offence of an attempted suicide. In a defence of insanity, the defendant admits the action, but asserts a lack of blame for the action or omission by reason of a mental infirmity.

Empirical study⁹⁶ and a report by the World Health Organisation⁹⁷ have buttressed the fact that suicidal behaviours are strongly connected with the presence of depression and other common mental disorders. WHO reports that an estimated total number of over 300 million people, equivalent to 4.4% of the world's population, suffered from depression globally in 2015.⁹⁸ Depression is also reputed as the major contributor to suicide deaths.⁹⁹ The report also acknowledged that the "risk of becoming depressed is increased by poverty, unemployment, life events such as the death of a loved one or a relationship break-up, physical illness and problems caused by alcohol and drug use."¹⁰⁰

The test for establishing the extent of mental disorder necessary for excusing criminal liability was first recognised in the celebrated English case of *R. Daniel M'Naghten*.¹⁰¹ The M'Naghten Rules were developed on the notion that accountability is the essence of the criminal law and that the ability to make a decision between right and wrong is the kernel of liability.¹⁰² The Rules created a presumption of sanity except the defendant could establish that at the time he committed the alleged criminal act, he was labouring under a defect of reason arising from a disease of the mind as not to know the nature and quality of his act or that if he did know it, that he did not know that he was doing wrong. The M'Naghten test thus has two-pronged components, each of which is independently adequate to prove an insanity defence.

First, a defendant is considered insane if he is unable to know what he is doing at the time he committed the alleged offence. This is in agreement with criminal law

⁹⁶ Omolabake Alabi and others, 'Suicide and Suicidal Behaviour in Nigeria: A Review,' *Journal of University of Ibadan Medical Students Association*. Available at <https://www.researchgate.net/publication/271748010_Suicide_and_Suicidal_Behavior_in_Nigeria_A_review>. Accessed on 30 August 2019.

⁹⁷ World Health Organisation, *Depression and other Common mental Disorders: Global Health Estimates* (Geneva: World Health Organisation, 2017), p. 5.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ (1843) 10 Cl. & F. 200; (1843) 8 E. R. 718. The case involves one Daniel M'Naghten who shot the deceased with a pistol believing that the deceased was the then British Prime Minister Robert Peel. On a subsequent charge with the offence of murder, the suspect pleaded not guilty to the charge on grounds of insanity. Witnesses were called on his behalf to attest that he was suffering from morbid delusion and was not in a sound mind at the time of committing the offence. The question Lord Chief Justice Tindal stated to the jurors for determination in relation to the charge against Daniel M'Naghten was, "whether at the time the act in question was committed, the prisoner had or had not the use of his understanding, so as to know that he was doing a wrong or wicked act. If the jurors should be of opinion that the prisoner was not sensible, at the time he committed it, that he was violating the laws both of God and man, then he would be entitled to a verdict in his favour: but if, on the contrary, they were of the opinion that when he committed the act he was in a sound state of mind, then their verdict must be against him." Daniel M'Naghten was eventually found not guilty. Following this decision, a panel of Judges attended the House of Lords and raise a series of hypocritical questions on the topic of insanity. The response to the questions resulted in the formulation of the famous M'Naghten Rules (1843) 4 St. Tr. (N. S.) 847. See generally "R. v. McNaughten Case Summary." Available at <<https://www.lawteacher.net/cases/r-v-m-naughten.php>> accessed on 20 September 2019.

¹⁰² Cyprian Okonkwo, (n94) 130.

principle or conception of culpability. The second element of the test seeks to determine if the defendant knew that his action was wrong. Thus, even where the defendant knew what he was doing, he would still be deemed insane if he was incapable of recognising the wrongfulness of the action committed.

However, over the years with the advancement in medical knowledge, considerable criticisms have trailed the Rules, particularly from psychiatrists who have argued that “there were many mentally ill people who, though able to appreciate intellectually that an action might be wrong, nevertheless were under intolerable emotional pressure to commit it (e.g. paranoid).” That to consider such people as being criminally liable was “a fiction of undesirable kind.”¹⁰³ Others have also criticised the Rules on the ground that “[b]y focusing exclusively on cognitive incapacity, the M’Naghten test is not well suited for treating more nuanced forms of psychological disorders, particularly those involving volitional impairment” though normally, the test has been connected with schizophrenia and psychotic disorders.¹⁰⁴

Defence of insanity is recognised both under the Nigerian Criminal Code¹⁰⁵ and the Penal Code.¹⁰⁶ Though the law presumes everyone to have a sound mental capacity until the contrary is established,¹⁰⁷ yet it admits that a person cannot be criminally held accountable if he is insane by reason of a state of mental disease or natural mental infirmity which robbed him of the ability to understand what he is doing or control his action or the capacity to know that he should not to do the act or make the omission.¹⁰⁸ It would appear that the Nigerian law on insanity under the Criminal Code is significantly wider in scope than the law of insanity formulated in the M’Naghten Rules.¹⁰⁹

For instance, the language of the Criminal Code talks not only of “mental disease” but also of “natural mental infirmity,” a phrase which was obviously intended by the framers of the law to go beyond the scope of mere “mental disease” and more

¹⁰³In the United States of America, though the M’Naghten Rules was applied in many States, but in the District of Columbia, the criticism of the Rules resulted in the 1954 formulation of the Durham Rule (the “Product” Test), which was more favourable to the psychiatric view. The case was in relation to a 23-year-old Monte Durham who had been in and out of prison and mental institutions since he was 17 years old. He was convicted for housebreaking by a district court Judge. The decision was overturned on appeal on grounds “an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.” The Durham case, in an attempt to reform the M’Naghten Rules departed from “legal formalisms and emphasised scientific psychological evaluations and evidence.” See “Insanity Defense.” Available at <https://www.law.cornell.edu/wex/insanity_defense> accessed on 21 September 2019. See also Cyprian Okonkwo, *ibid*, 130-131.

¹⁰⁴ “Insanity Defense,” *ibid*.

¹⁰⁵ Criminal Code, section 28.

¹⁰⁶ See section 51 thereof, which provides that “[n]othing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law.”

¹⁰⁷ Criminal Code Act, section 27; *Guobadia v. State* (2004) All FWLR (Pt. 205) 191 at p. 201; *Onakpoya v. Queen* (1959) NSCC 130. See also Criminal Procedure Act No. 51 of 1977 of South Africa, section 78(1A) which raises a similar presumption of law but requires that the proof shall be “on a balance of probabilities.”

¹⁰⁸ *Ibid*, section 28.

¹⁰⁹ Cyprian Okonkwo, (n94), at 144.

than the M’Naghten Rules.¹¹⁰ In *R. v. Omoni*¹¹¹ and *R. v. Tabigen*,¹¹² the phrase “natural mental infirmity” was defined by the respective appellate courts to mean, “a defect in mental power neither produced by his own default nor the result of disease of the mind.”¹¹³ The fact that a defendant was “in a grip of a strong passion” may therefore be material in considering if he had been deprived of the capacity to control his action.¹¹⁴

Definitely, a person who attempts suicide may possibly be under a control of “strong passion” which may cause him to lose the capacity to understand what he is doing or the capacity to either control his action or know that he should not do the act. Where such is proved on the balance of probability or preponderance of evidence coupled with supportive medical evidence, the defendant ought to be relieved from criminal liability.¹¹⁵ However, it is necessary to point out that a defendant’s display of abnormal behaviour is not evidence of insanity and evidence tendered by the defendant himself is suspect and is usually not taken seriously by the court.¹¹⁶

In contrast to the Nigerian position and the M’Naghten Rules which stress the defendant’s cognitive ability, other jurisdictions like South Africa have recognised the “irresistible impulse test (IIT)” under their law. The IIT focuses on the volitional ingredients of insanity. According to the IIT, a defendant is legally insane and consequently not criminally accountable for his action if a mental illness made it impracticable for him to control his behaviour and shun the commission of the alleged criminal act. Lubaale offers some useful information on IIT as an insanity defence. According to the author, “a person can fall within the ambit of the insanity definition if by reason of their mental illness they lack ‘self-control’ and they cannot ‘resist’ committing or ‘refrain’ from committing an offence.”¹¹⁷

For the avoidance of doubt, section 78(1) of the South African Criminal Procedure Act¹¹⁸ provides for mental illness or mental defect and criminal responsibility. It states *inter alia*:

A person who commits an act or makes an omission which constitutes an offence and who at the time of such commission or omission suffers from a mental illness or mental defect which makes him or her incapable –

- (a) of appreciating the wrongfulness of his or her act or omission;
- or
- (b) of acting in accordance with an appreciation of the wrongfulness of his or her act or omission, shall not be criminally responsible for such act or omission.

¹¹⁰ *Ibid*, 134.

¹¹¹ (1949) 12 WACA 511.

¹¹² (1960) 5 FSC 8.

¹¹³ Cyprian Okonkwo, (n94), at 134.

¹¹⁴ *Ibid*.

¹¹⁵ *Guobadia v. State*, (n107) at. 204-205.

¹¹⁶ *Onyekwe v. The State* (1988) 1 NWLR (Pt. 72) 565.

¹¹⁷ See Emma Charlene Lubaale, (n95) at 13.

¹¹⁸ No. 51 of 1977.

The position under the South African law, which recognises the element of self control, would make it easier for a court not to hold a defendant guilty by reason of insanity where the defendant was labouring under a mental disorder or defect that controlled him to commit an alleged offence. Had similar provisions been made under the Nigerian law, it is submitted that those charged with an attempted suicide would have benefitted more. This is because of their inability to control their suicidal propensities. As earlier noted in the work, the mental condition of a person who attempts suicide often make them incapable of acting in accordance with the appreciation of the wrongfulness of their suicidal behaviour.¹¹⁹

IV. Conclusion and Recommendations

The article examined the position of Nigerian penal laws in relation to death penalty, suicide and attempted suicide. The primary objective was to find out if the Nigerian laws on the subjects under investigation were satisfactory and if not, whether there was need for reforms in our laws.

With respect to death penalty, it was discovered in the study that death penalty is not only a threat to the enjoyment of the right to life but also violates the right to dignity and freedom from torture, inhuman and degrading punishment. It is therefore, recommended that the 1999 Nigerian Constitution and statutes still retaining death sentences as forms of punishments for capital offences should be amended accordingly to reflect current realities across the world where imposition of life imprisonment is applied for capital offences. This will bring our laws in accordance with such international and regional instruments like the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) Concerning the Abolition of Death Penalty, Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) Concerning the Abolition of Death Penalty in all Circumstances, and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

It was also discovered in the study that though suicide has not been criminalised under any known Nigerian laws, attempted suicide as well as aiding and abetting are offences for which various sanctions are prescribed under Nigerian criminal statutes. One of the likely reasons for prescribing penalty for a criminal offence is to serve as deterrent to others contemplating similar crime. But whether the theory of deterrence would serve any useful purpose, for instance, where a person attempted suicide because of a mental disorder which requires proper psychiatric treatment or where another attempted suicide because of an incurable physical disease is very doubtful. What positive effect would criminal sanction serve in the case of a person who attempted suicide because of unemployment, poverty and inability to feed himself or his family? A criminal sanction for an attempted suicide by a person who

¹¹⁹ See Emma Charlene Lubaale, 'The Crime of Attempted Suicide in Uganda: The Need for Reforms to the Law,' (n95) at 14.

has been on death row for years will equally serve no useful purpose, except to continue subjecting the person to psychological trauma and mental agony which may further cause him to think suicidal thoughts. In all these instances, it is apparent that criminal sanctions for attempted suicide would be self-defeating and counter-productive.

It is therefore, recommended that the Nigerian government should decriminalise sanctions for attempted suicide, which is a mere colonial relic decorating our statute books. On the contrary, it serves a useful purpose for the culprit, the family and the society at large where the root cause(s) that compel people to commit suicide or attempt suicide can be identified and addressed where possible. Most times, the person who attempted the suicide may not even know that his action is a criminal offence. All that is uppermost in his heart is to end his life rather than continue to live a meaningless life. Thus, survivors of suicidal attempts should not be punished but be presumed to suffer from mental stress and should be offered opportunities for rehabilitation by the government and relevant non-governmental organisations. Meaningful social welfare package should also be made available by the Nigerian government to the unemployed as it is obtainable in other developed countries. This will go a long way to reducing the rate of suicide by unemployed youths in the country.

The Indian example is the pathway Nigeria should adopt towards mental healthcare. Recently India, a former British colony like Nigeria, enacted the Mental Healthcare Act 2017 which effectively decriminalises attempted suicide which was punishable under section 309 of the Indian Penal Code. The 2017 Act also imposes a duty on the Indian government to provide care, treatment and rehabilitation to a person who is suffering from severe stress and who attempted to commit suicide with a view to reducing the risk of reoccurrence of an attempt to commit suicide. Unfortunately, Nigeria does not have any effective mental health legislation or policy. A Mental Health bill first introduced in 2003 on the floor of the National Assembly is yet to translate into law years after it was re-introduced in 2013, despite calls for its enactment into law.

Flowing from what the authors have stated above, it is suggested therefore, that the Nigerian government and other relevant stakeholders should have a re-think on death penalty, suicide and attempted suicide with a view to repealing our laws sanctioning death penalty and criminalising attempted suicide. If the challenges identified in the article and the recommendations made are addressed by the Nigerian government, they will go a long way to settling the raging debates discussed in the article.