

## LEGAL AND INSTITUTIONAL FRAMEWORKS FOR ADDRESSING HOMICIDE CASES IN NIGERIA

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### Abstract

*This paper examined the legal and institutional frameworks for addressing homicide cases in Nigeria. It will also made reference to laws of homicide in other jurisdictions like India, Canada and United Kingdom. The author argues that homicide is a relatively rare yet high-impact event. Its consequences are deadly for the victim but also devastating for those intimately connected to the victim and often, the offender too. At the same time, it is an act that captivates many and is the subject of sustained media attention and of numerous popular works of fiction. Homicide is a crime which involves the killing of one human being by another, it is a general term and may refer to a noncriminal act as well as the criminal act of murder. Some homicides are considered justifiable, such as the killing of a person to prevent the commission of a serious felony or to aid a representative of the law. Other homicides are said to be excusable, such as when a person kills in self-defense. A criminal homicide is one that is not regarded by the applicable criminal code as justifiable or excusable. All legal systems make important distinctions between different types of homicide, and punishments vary greatly according to the killer's intent, the dangerousness of the killer's conduct, and the circumstances of the act. This paper analyzed the laws on homicide and discussed the impact of the judiciary as an institution established to adjudicate upon the crime of homicide in Nigeria. The paper adopted a doctrinal approach whereby primary and secondary sources of information were relied upon. That is various legal doctrines, concepts, scholarly opinions, textbooks and precedents were reviewed and analysed to achieve this research. The paper concludes that the law of homicide in Nigeria is still conservative and anachronistic when compared to countries like Canada that are very progressive in their laws on homicide.*

### 1.0 Introduction

Life is considered sacred and a gift from God. It therefore comes as no surprise that the offence of homicide has been considered universally as the most heinous offence against the person, whether viewed from the standpoint of consequences or sanction.<sup>1</sup> The central theme of the law of homicide is based upon the unique value of human life. While danger to life is an element of many other crimes as well, the law of homicide focuses on it directly, by declaring criminal a wide range of conduct that actually causes a death. Because life is valued so highly, such conduct is prohibited much more generally than conduct causing other kinds of harm. Homicide as it relates to criminal law is a very essential topic of discourse as it affects human life. What makes homicide special is the uniqueness of causing personal injury and property loss, among other offenses, permanent damage, causing death is a damage of distinct order.

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<sup>1</sup> S.I. Oji, Offence of Murder: A critical Appraisal (Rivers State University 2019) 66

The term ‘homicide’ as defined by Black’s Law Dictionary is the killing of one person by another.<sup>2</sup> Williams G similarly posited that homicide is the legal term for the killing of a human being, whether the killing is lawful or unlawful. This definition drives home the point that homicide is not wholesomely illegal or unlawful but may be done lawfully based on certain criteria as provided by the law.<sup>3</sup> Lawful homicides are excused by the law and they include death resulting from execution of sentence, death resulting from lawful arrest or while preventing escape or rescue after arrest, death caused by misadventure, suppression of riot, and killing of thieves,<sup>4</sup> the implementation of the death penalty or the accidental killing of a boxer by his opponent. Unlawful homicide is legally classified,<sup>5</sup> as murder, manslaughter, or infanticide.<sup>6</sup> Each of these categories shares a common *actus reus* (guilty act). What distinguishes them is the extent to which the offender is deemed to have intended to cause the death of the victim or, in legal terminology, the perpetrator’s *mens rea* (guilty mind). The most heinous of homicide is murder, which carries the most serious penalties. Other forms of homicide demonstrate reduced levels of intent. These include manslaughter, suicide, and infanticide. In rare cases, a killing is classified as legally justified by self-defense or some other reason and is not punished as a crime. To ground murder it must be proved that the offender is responsible, of sound memory and must have attained the age of discretion (7 years) and does not suffer from diminished responsibility.<sup>7</sup>

The odium with which society views homicide stems from the fact that killing a person means a complete annihilation of the victim’s existence, depending on whether or not the murderer’s act is adjudged to be unlawful or unjustified;<sup>8</sup> capital punishment had been the prescribed penalty for the act of homicide where not excusable by the law.<sup>9</sup> In traditional African society including Nigeria, offences such as murder, witchcraft, and blasphemy, can lead to the death penalty. Such arbitrary offences (customary or otherwise) has been outlawed by section 36(12) of the CFRN<sup>10</sup> and the ascertainment of the guilt of accused persons has been institutionalized via the judiciary.<sup>11</sup>

## 2.0 Legal Framework Governing Homicide in Nigeria

Under this sub-issue, this paper will examine the domestic legal frameworks that governs the offence of homicide in Nigeria. In addressing this issue, there exist certain legal structure which comprises of: the Criminal Code Act, the Penal Code Act, the Constitution of the Federal Republic of Nigeria 1999 and the African Charter on Human and Peoples’ Rights and certain salient provisions would be discussed. Though, it is important to state that two criminal law regimes are in operation in Nigeria; the

<sup>2</sup> B A Garner, Black’s Law Dictionary (9<sup>th</sup> edn, West Publishing Co. Thomas Reuters 2009) 802

<sup>3</sup> G Williams, Criminal Law (2<sup>nd</sup> edn, Stevens and Sons London 1993) 204

<sup>4</sup> C.O Okonkwo, Okonkwo and Naish on Criminal Law in Nigeria (Spectrum Books Limited 1980) 231

<sup>5</sup> M Aebi, ‘Crime trends in Western Europe from 1990 to 2000’, (2004) (10) (2–3) European Journal on Criminal Policy and Research, 163–86

<sup>6</sup> E. Anderson, Code of the Street: Decency, Violence and the Moral Life of the Inner City (New York: W. W. Norton, 1999)

<sup>7</sup> Oji (n 1)

<sup>8</sup> L Atsegbua and others, Criminal Law in Nigeria: A Modern Approach (Malthouse Press Limited 2021) 139

<sup>9</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended) (CFRN), 33 (1); Criminal Codes Act, 1916 (CCA),

Cap C38, Laws of the Federation of Nigeria, 2004, ss37,319; Penal Code Act (PCA), 1960, S221, 411; N E Adekunbi,

‘Death Penalty in Nigeria: To Be Or Not To BE: The Controversy Continues’ (2013) (3)(3) Arabian Journal of Business and Management Reviews; 24

<sup>10</sup> Adekunbi (n 8)

<sup>11</sup> Oji (n 1)

Penal Code and Criminal Code. The Penal Code operates in the northern states of Nigeria and the Criminal Code operates in the southern states of Nigeria. In the Southern part of Nigeria, the offence of intentional killing a person is termed "murder" under the Criminal Code, whereas in the Northern part of Nigeria same offence is termed "culpable homicide punishable with death". Where killing is unintentional in the southern states, it is termed "manslaughter" and in the Northern states, it is termed "culpable homicide not punishable with death". Where an unsuccessful attempt to kill is made, it is called "attempt to murder".<sup>12</sup>

## 2.1 Criminal Code Act, 1916 (as amended)

Homicide is the act or omission of taking the life of a person by another. To raise the issue of homicide, the death of the deceased, the act or omission which resulted in the death, and an intention of the act or omission of the accused to cause grievous harm must be proved.<sup>13</sup> From a broader lens, homicide in itself is a compendium of any form of taking another's life, which may include lawful homicide, murder, infanticide, manslaughter, suicide, and other related incident and the Criminal Code Act (CCA) provides for all the above-stated forms of homicide. In light of the above definitions on homicide, it can be inferred that for any incident of homicide to have been said to have occurred, the victim must be a human being and a human is said to have been killed when he is in a living state. Section 307 succinctly states:

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is *severed* or not.

In other words, a human capable of been killed is one which has proceeded completely in a living state from the mother. It is thus safe to state that, the killing of a viable foetus is generally not considered homicide unless the foetus is born alive. In the case of *R v. West*,<sup>14</sup> during the course of an abortion, the baby was delivered prematurely but alive. However, external medical circumstances of the attempt on aborting the child led to the death of the child. The court purported that, hence the child proceeded alive from the womb, it was a human being capable of being murdered. Thus, the offender was convicted for the death of the child. Haven established the status of a human being from a legally recognized birth capable of being killed, it is imperative to state the circumstances resulting in the death of a person, as provided in the CCA:<sup>15</sup>

- (1) if the offender intends to cause the death of the person killed, or that of some other person;
- (2) if the offender intends to do to the person killed or to some other person some grievous harm;

<sup>12</sup> Collins Okeke and others, "Nigeria: The Offences Of Murder, Culpable Homicide And Attempt-To-Murder In Nigeria", 01 August, 2021, <https://www.mondaq.com/nigeria/crime/1099056/the-offences-of-murder-culpable-homicide-and-attempt-to-murder-in-nigeria>, accessed 17 June, 2023

<sup>13</sup> *Chukwu v State* (2007) 13 NWLR (Pt 1052) 430; *Nkebisi v State* (2010) 5 NWLR (Pt 1188) 471; *Ndukwe v State* (2009) 7 NWLR (Pt 1139) 43; *Musa v State* (2009) 11 NWLR (Pt 1045) 202, *Isah v State* (2007) 12 NWLR (Pt 1049) 582; *Jua v State* (2010) 4 NWLR (Pt 1184) 217; *Uwagboe v State* (2007) 6 NWLR (Pt 1031) 606; *Mohammed v State* (2007) 13 NWLR (Pt 1050) 186; *Ubani v State* (2003) 18 NWLR (Pt 85) 329; *Ogba v State* (1992) NWLR (Pt 222) 164

<sup>14</sup> (1848) Vol 2 C & KER,

<sup>15</sup> CCA s 316

- (3) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;
- (4) if the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;
- (5) if death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid;
- (6) if death is caused by wilfully stopping the breath of any person for either of such purposes; is guilty of murder.

In the second case it is immaterial that the offender did not intend to hurt the particular person who is killed.

In the third case it is immaterial that the offender did not intend to hurt any person.

In the three last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

More concisely, before any of the incidents of homicide can be said to have occurred, there is need to establish that the consequences were presumed or premeditated by the accused: the existence of an intention to cause death, the intention to inflict grievous bodily harm, reckless act or omission that led to the death, reckless act or omission as to inflict grievous bodily harm and a state of mind which may suffice to constitute murder under certain technical rules. It is imperative to note that an intention to cause the death of another or an act that leads to the death of another can be deemed lawful.<sup>16</sup> Every human society is governed by body of laws – codified, or non-codified which determines human actions. As such, some causes of death are usually approved by these bodies of law. Therefore, any death which falls within the context of a society's jurisprudence is regarded as lawful homicide hence justifiable due to legal backing.<sup>17</sup> Where such killing is not authorized by the law, it is considered unlawful homicide and certain provision of the Criminal Code Act addressed the issues. A cursory analysis of section 316 would show that apart from subsection (1), all other subsections exclude the defence as provided in the Criminal Code:

Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident. Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial. Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.<sup>18</sup>

Thus, in the relevant circumstances it may be fairly posited that it is immaterial that the offender did not intend to hurt the particular person, who is killed, or to hurt any person or to cause death by grievous

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<sup>16</sup> CCA, s 306

<sup>17</sup> E Lawrence, 'Nigeria and the Incidences of Homicide' [2015] (4)(5) *American International Journal of Social Science*; 105

<sup>18</sup> CCA, s 24

harm.<sup>19</sup> However, there is a debate as to whether or not intention to inflict grievous bodily harm should be taken as an intention to kill. It is purported that; the absence of a congenital link between an intention to cause grievous bodily harm and death would massively serve as a leverage and defence mechanism to perpetrators of killings. On the contrary, it is being posited that intention to inflict bodily harm is not the same as intention to kill and fairly argues that, the offender may most likely be ignorant that such bodily harm would result in death of another. Under the Criminal Code, section 316 does appear to be an exhaustive list on what constitute taking the life of another. Thus the different incident of homicide are: infanticide,<sup>20</sup> aiding suicide,<sup>21</sup> concealment of birth,<sup>22</sup> and generally from cases of lawful killing as killing in execution of sentence,<sup>23</sup> killing in self-defence,<sup>24</sup> killing in defence of dwelling houses,<sup>25</sup> causing death by misadventure, causing death in the course of lawful arrest,<sup>26</sup> prevent escape or rescue after arrest,<sup>27</sup> suppression of riot,<sup>28</sup> and others. Imperatively, under the Criminal Code, murder is a capital offence by virtue of section 319 of the Criminal Code by which it is punishable with the sentence of death.

## 2.2 Penal Code (Northern States) Federal Provisions Act, 1960 (as amended)

The Penal Code (Northern States) Federal Provisions Act, 1960 (as amended) (PCA) provides basically for culpable homicide.<sup>29</sup> It provides that the act or intention resulting to death of a person.

The Penal Code (Northern States) Federal Provisions Act, 1960 (as amended) (PCA) provides is classified as homicide.

Whoever causes death-

- (a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or
- (b) by doing an act with the knowledge that he is likely by such act to cause death; or
- (c) by doing a rash or negligent act, commits the offence of culpable homicide.<sup>30</sup>

Illustrating the position of homicide in the PCA, the case of *State v Usman*<sup>31</sup> would be analysed. The respondent herein was charged under Section 221(a) of the PCA for the offence of culpable homicide punishable with death for killing his wife, Aminatu Babawuro.

The said section provides thus:

Except in the circumstances mentioned in section 222 of this Penal Code, culpable homicide shall be punished with death- (a) if the act

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<sup>19</sup>*Ibid* ss 325, 318, 283

<sup>20</sup>CCA, ss 327(a), 307

<sup>21</sup>*Ibid*, s 326(3)

<sup>22</sup>*Ibid*, s 329

<sup>23</sup>*Ibid*, s 254

<sup>24</sup>*Ibid*, ss 286, 287, 288

<sup>25</sup>*Ibid*, s 282

<sup>26</sup>*Ibid* s 271

<sup>27</sup>*Ibid* s 273

<sup>28</sup>*Ibid* ss 276-280

<sup>29</sup>PCA, ss 220, 221 - 222

<sup>30</sup>*Ibid*, s 220

<sup>31</sup> (2005) 5 NWLR (Pt. 906) 80

by which the death is caused is done with the intention of causing death; or

The PW1, (a male servant of the respondent) testified that an argument ensued between the respondent and the deceased. Upon his arrival at the scene, the victim was dead. The respondent sternly warned PW1 not to disclose the incident and he buried the victim in an already dug-grave. The deceased was discovered by a dog, some days after the incident and an arrest was carried out on the respondent. In course of investigation, PW6 (a medical doctor) who performed a post mortem examination of the body of the deceased opined that the death was as a result of severe loss of blood resulted from an injury sustained on the neck which may most-likely be an aftermath of a sharp object. The trial Court found the respondent guilty of the offence of culpable homicide not punishable with death under Section 220(b) of the PCA and punishable under section 224 of the PCA which provides:

Whoever commits culpable homicide not punishable with death, shall be punished with imprisonment for life or for any less term or with fine or with both.

The Court further purported that the prosecution failed to prove the existence of *mens rea* as the respondent may not likely possess the requisite knowledge that the act would result in death. The trial Court also found the PW1's evidence was not enough to prove that the respondent actually dug a grave in his compound preparatory to killing his wife. Dissatisfied with the judgement of the trial (High) Court, an appeal was initiated, contending *inter alia* that it proved beyond reasonable doubt to entitle the state to get the sentence of guilty as charged. The respondent cross-appealed and in the determination of the suit, the Court of Appeal considered the statutory provisions in sections 221 and 222 of the PCA. The Court of Appeal held that in the instant case, the evidence of PW1 and PW6 provided adequately that the respondent actually intended the killing of the deceased. The respondent in the instant case did not come under any of the exceptions under Section 222 of the PCA to make the trial Court return a verdict of guilt for culpable homicide not punishable with death instead of culpable homicide punishable with death as charged. On proof of intention to commit crime, the intention of the respondent was manifested in cutting the neck of the deceased with a sharp object. In summary, the *mens rea* of the killer was clearly proven by the prosecution. The Court is entitled to draw such inference from the evidence as it appears proper, taking into account the nature of the weapon used, the nature of injuries and whether or not the blows were inflicted on a vital part of the body of the deceased. The appellant Court further stated that there is duty on the Courts to avoid speculation as to guilt in murder or homicide cases to stand. In a lead judgement, the appeal was adjudged meritorious and accordingly it was allowed, while the cross appeal was dismissed. The applicable section provides:

- (1) Culpable homicide is not punishable with death if the offender whilst deprived of the power of self-control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.
- (2) Culpable homicide is not punishable with death if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence



without premeditation and without any intention of doing more harm than is necessary for the purpose of that defence.

(3) Culpable homicide is not punishable with death if the offender, being a public officer acting for the advancement of public justice or being a person aiding a public officer so acting exceeds the powers given to him by law and causes death by doing an act which he in good faith believes to be lawful and necessary for the due discharge of his duty as a public officer or for assisting that public officer in the due discharge of such duty and without ill will towards the person whose death is caused.

(4) Culpable homicide is not punishable with death if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

(5) Culpable homicide is not punishable with death when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

(6) Culpable homicide is not punishable with: death where a woman intentionally causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child.

(7) Culpable homicide is not punishable with death when a person causes the death of another by doing a rash or negligent act.<sup>32</sup>

Addressing the issue of bodily harm on whether or not intention to inflict grievous bodily harm should be taken as an intention to kill. It can be purported that; the absence of a congenital link between an intention to cause grievous bodily harm and death would massively serve as a leverage and defence mechanism to perpetrators of killings. It can also be argued on the contrary that intention to inflict bodily harm is not the same as intention to kill and fairly argues that, the offender may most likely be ignorant that such bodily harm would result in death of another. The PCA further makes provision for an exemption of criminal liability, where an act or omission is pursuant upon compliance of the law.<sup>33</sup>

### **2.3 Constitution of the Federal Republic of Nigeria, 1999 (as amended)**

In portraying the severity of the offence of homicide, the right to life being a universal right is provided in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (CFRN).<sup>34</sup> However, various jurisdictions recognize permissible limitation to this universal right. In Nigeria, such permissible limitation includes the imposition of the death penalty. Specifically, the below-stated section provides as follows:

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<sup>32</sup> PCA, s 222

<sup>33</sup> PCA, s 45

<sup>34</sup> Cap. C23 LFN 2004, s 33(1)

Every person has a right to life, and no one shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which one has been found guilty in Nigeria<sup>35</sup>

A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary:

- a) For the defence of any person from unlawful violence or for the defence of property;
- b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- c) For the purpose of suppressing a riot, insurrection or mutiny.<sup>36</sup>

The import of this provision is to the effect that the right of a person to live shall not be deliberately deprived except under death penalty pursuant to a criminal offence as provided by the law. Conjunctively analysing both subsections, it does appear that subsection 2, overlaps on the former and thus yielding to an understanding that the right to life is violated only when there has been an arbitrary deprivation of life. The phrase “every person has a right to life” is independent in itself and possesses the sustainability of a cause of action, even prior to the occurrence of death, thus providing an inclusive understanding that robes the constitution to protect the life and property of the society. The right not to be deprived of life is not hinged on a delineated sphere but it is a breach of the compendium of other rights which the deceased would have exercised if alive.<sup>37</sup>

From the above, it follows that the constitutionality of death penalty as lawful homicide is not in doubt. Upon the foregoing, the Supreme Court of Nigeria upheld the constitutionality of death sentence in the case of *Onuoha Kalu v The State*,<sup>38</sup> where the court held inter alia:

Upon a careful perusal of the various foreign authorities to which our attention was drawn by the opinion that the death penalty per se amounts to torture, inhuman and degrading treatment and therefore intrinsically unconstitutional seems to mean minority view. Indeed, a close study of those decisions reveals that the foreign jurisdictions that have similar provisions in their constitution as ours have repeatedly pronounced the death penalty to be constitutionally valid.<sup>39</sup>

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<sup>35</sup>*Ibid*

<sup>36</sup>*Ibid*, s 33(2)

<sup>37</sup> A O Enabulele, ‘The Right to Life or the Right to Compensation upon Death: Perspectives on an Inclusive Understanding of the Constitutional Right to Life in Nigeria’ [2014] (3) (1) *Afe Babalola University: Journal of Sustainable Development Law and Policy*; 100-101

<sup>38</sup> (1998) 13 NWLR (Pt.583) 531

<sup>39</sup> Per Iguh (JSC)



In the instant case, the appellant was charged with the offence of murder and convicted to death penalty by the trial court. Dissatisfied with the decision, an appeal was filed on the grounds that, the penalty of death contravenes the right to life. However, the appellate court upheld the decision of the trial court. The appellant further initiated an appeal at the Supreme Court, wherein the supreme court upheld the decision that death penalty for deprivation of the life of another, is constitutional. It can be inferred that the Supreme Court affirmed the position of death penalty as lawful homicide for the offence of murder, upon final pronouncement of guilt by the court. The position of the instant case, served as precedence for similar contentions on the constitutionality or otherwise of the death penalty.<sup>40</sup> Despite the above, the issue as to whether or not, death penalty should be abolished has raised dissenting views. The United Nations Commission on Human Rights passed a resolution, opining a global suspension on that death penalty, notwithstanding the severity of the offence. This view on abolition of death penalty asserts that, the said punishment amounts to inhumanity, does not proffer opportunity for reformation and violates the right to live.<sup>41</sup> On the contrary, death penalty has been considered as a retributive measure<sup>42</sup> and that providing opportunities for only a defined term of imprisonment can be considered a threat to the society and thus deterrence have fallen in importance. It has further been argued that the abolition of the death penalty would birth quite an alarming number of unlawful homicides on the premise that the punishment is merely for a definite term and not severe.<sup>43</sup>

In buttressing the position of the constitution on the incidence of homicide and its punishment, the Supreme Court held thus:

Whereas it is the duty of the legislature to enact laws, that of the judiciary is to interpret the laws so made. The duty both to make and amend laws so made belongs exclusively, by Constitutional arrangement, to the legislature as provided under section 4 of the Constitution of the Federal Republic of Nigeria ... The death penalty may be said to be degrading of human beings, etc, but same cannot be said where the law recognises the existence and desires its enforcement by the law.

...It is settled law also that where a statute prescribes a mandatory sentence in clear terms as in the instant case, the courts are without jurisdiction to impose anything less than the mandatory sentence as no discretion exists to be exercised in the matter. It is a duty imposed by law.<sup>44</sup>

From the above provision, it is a principle of law that, for an act to be considered an offence, it must be stated in the law and the punishment provided therein, which shall be adhered to. In analysing the position, homicide is explicitly provided as the offence of killing of a person by another, which punishment is the death penalty. Owing to the express provision, any act or omission that results to the

<sup>40</sup> *Adeniji v State* (2001) 13 NWLR (Pt.730) 375, *Okoro v State* (1998) 14 NWLR (Pt. 584) 181

<sup>41</sup> United Nations Commission on Human Rights Resolution 2005/59, United Nations General Assembly Resolution 62/149 (2007),

<sup>42</sup> C Flanders, 'Time, Death and Retribution' [2016] (19) (2) *Journal of Constitutional Law*; 432

<sup>43</sup> M L Radelet, 'The Incremental Retributive Impact of a Death Sentence Over Life Without Parole' [2016] (49) (4) *University of Michigan Journal of Law Reform*; 813

<sup>44</sup> *Joseph Amoshima v State* (2011) LPELR-SC.283/2009.

death of another (except authorized by law) constitutes homicide and the penalty as defined must be complied with. In other words, the constitution enshrines the position of criminal law on defined offences and punishments.

Subject as otherwise provided by this constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provision of a law.<sup>45</sup>

The rationale behind the above provision, is to the effect that what constitutes an offence and its appropriate punishment should be void of speculations and robed with certainty. That is to purport that death penalty is a legal form of punishment when it is carried out in the execution of a sentence of court of competent jurisdiction in respect of a criminal offence for which a person has been found guilty in Nigeria.

Another provision of the constitution as it relates to the deprivation of the life of a person by another, is the fact that such person is not robed with the cloak of innocence until proven guilty. That is to say, it behoves on the prosecution to prove beyond reasonable doubt that the said person committed an act or omitted an act that led to the death of another. 'Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty'.<sup>46</sup>

#### **2.4 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983**

In addition to her domestic laws dealing with homicide such as the CCA and the PCA, Nigeria subscribed to the African Charter on Human and Peoples' Right (ACHPR), a protocol of the African Union (AU) and enacted the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983 (ACHPRA).<sup>47</sup> The rights provided for in the ACHPR are fundamental rights like the provisions of Chapter IV of the CFRN.<sup>48</sup>

Article 4 of the ACHPR provided for the inviolable right to life and the integrity of the human person and sternly warns against their arbitrary deprivation. Obviously, this provision approves of the death penalty which results from the order of a court of competent jurisdiction.<sup>49</sup> The right to life is the nucleus of all other rights; a wide variety of other rights are dependent on the existence of life for their fulfilment. The traditional approach to the right to life mostly cover occasions where the government was directly involved in the arbitrary deprivation of life, thus making it actionable in court only upon the occurrence of death and equating it with the right to compensation where arbitrarily deprived.<sup>50</sup>

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<sup>45</sup> CFRN, s 36(12)

<sup>46</sup> *Ibid*, s 36 (5)

<sup>47</sup> No 2 of 17<sup>th</sup> March, 1983, Cap A9, LFN 2004

<sup>48</sup> Fundamental Rights (Enforcement Procedure) Rules, 2009 (FREPR), Order 1 Rule 2

<sup>49</sup> *Onuoha Kalu v The State* (1998) 13 NWLR (Pt.583) 531

<sup>50</sup> *Nasiru Bello v. A.G Oyo State* (1986) 5 NWLR (Pt. 45) 828

In many ways, there has been a movement away from this traditional approach to a more liberal and expansive approach that does not consider the breach of the right in terms of the occurrence of death.

In *Ogbe v Attorney General Enugu State*<sup>51</sup> it was held that the right to life included the right to the means of livelihood. Similarly, the rights to healthcare, education, healthy environment and the positive duty to provide conditions that guarantee dignified life have all been regarded as implied extensions of the right to life.<sup>52</sup>

### 3.0 Foreign Legal Frameworks on Homicide

This paper made reference to issues of homicide as addressed beyond the Nigerian legal jurisprudence to explore how the laws of other countries defined and treated the subject of homicide to see whether Nigeria can benefit or borrow a leaf from their laws. To this extent, the Penal Code of India, the Criminal Code of Canada and the Homicide Act of the United Kingdom were examined.

#### 3.1 Indian Penal Code, 1890

The Indian Penal Code (IPC) defines the elements of the offence of murder and homicide; sections 299 and 300 of the IPC deal with murder. Murder occurs when, with a pre-determined intention to end life, one person or a group of persons kill another person. Under the IPC, an offence does not amount to murder unless it involves an offence which comes within the definition of culpable homicide; all murders are culpable homicide but not all homicides are murders.<sup>53</sup> Homicide, on the other hand, being the killing of a man by another, can be lawful or unlawful; culpable homicide is punishable by law and is further divided into culpable homicide amounting to murder and culpable homicide not amounting to murder.<sup>54</sup>

By sections 299 and 300 of the IPC, culpable homicide is considered as murder if (i) the act is committed with an intention to cause death (ii) the act is done with the intention of causing such bodily injury for which the offender has knowledge that it would result in death (iii) the person has the knowledge that his act is dangerous and would cause death or bodily injury but still commits the act.<sup>55</sup> The difference between murder and culpable homicide is intention.<sup>56</sup> Section 300 of the IPC states certain exceptions that commutes murder to culpable homicide and therefore punishable under section 304 of the, IPC and not under section 302. The exceptions are: (i) grave and sudden provocation<sup>57</sup> (ii) private defence<sup>58</sup> (iii) exercise of legal power (iv) without premeditation in sudden fight and (v) consent in case of passive euthanasia.

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<sup>51</sup> (2016) All FWLR (Pt. 819) 1160 H.C

<sup>52</sup> A O. Enabulele, 'The Right to Life or the Right to Compensation Upon Death: Perspectives on an Inclusive Understanding of the Constitutional Right to Life in Nigeria' [2014] (3)(1) *Afe Babalola University: Journal Of Sustainable Development Law And Policy*; 104-107

<sup>53</sup> P Deshpande, 'India: Difference Between Murder and Culpable Homicide' (2020)

<<https://www.mondaq.com/india/crime/988662/difference-between-murder-and-culpable-homicide>> accessed 26 October 2022

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid*

<sup>56</sup> *Ibid*; *Reg. v Govinda* (1877) ILR 1 Bom 342; *A.P. v R. Punayya* (1976) 4 SCC 382

<sup>57</sup> *K.M. Nanavati v State of Maharashtra* (1961) AIR 1962 SC 605; *Muthu v State Of Tamil Nadu* (2007) ILLJ 9 MAD

<sup>58</sup> *Nathan v State of Madras* AIR 1973 SC 665

Section 302 of IPC punished murder with death or imprisonment for life and fine while section 304 of the IPC punishes culpable homicide with Imprisonment for life or Imprisonment for either a term extending up to ten years and/or fine. For a conviction to happen the prosecution must prove the suspect's guilt beyond reasonable doubt; the doubt must be real and reasonable and if the trial judge is in doubt, the decision must be against the party having the burden of proof.<sup>59</sup> The adjudication tribunal has a duty to acquit the accused if its mind is evenly balanced as to whether or not the accused is guilty.<sup>60</sup> An important principle of Indian criminal law – the rarest of the rare case - enshrined in *Bachan Singh v State of Punjab*<sup>61</sup> limits the court's vast discretion in imposing death penalty from being a general rule to being awarded only in exceptional circumstances and that too after recording the special reason for imposing the death penalty.<sup>62</sup>

### 3.2 Criminal Code of Canada, 2006

Killing someone with a criminal intent is a serious offence under the Criminal Code of Canada (CCC) punishable with possible imprisonment.<sup>63</sup> However, the penalty depends on the type of murder charges as not all homicides are the same.<sup>64</sup> Homicides fall under two types: culpable (such as murder, manslaughter or infanticide)<sup>65</sup> and non-culpable (when accused is not held legally responsible, such as death caused by self-defence). Culpable homicides are further categorized into first degree murder, second degree murder, infanticide and manslaughter. For a murder to be first degree, it must be premeditated; the prosecution must necessarily demonstrate that the accused had a carefully calculated scheme to take the life of an individual.<sup>66</sup> Under this category, culpable homicide becomes murder when it is contracted; committed against a law enforcement agent; committed while attempting or committing kidnapping, hijacking of an aircraft, intimidation, forcible confinement, sexual assault (with or without a weapon), criminal harassment; committed during a hostage-taking or terrorist activity.<sup>67</sup> The penalty for first degree murder is mandatory life imprisonment with minimum parole eligibility of 25 years.<sup>68</sup> Second degree murder is that which is not first degree murder and involves the intention of killing or causing bodily harm knowing it would likely result in death but without premeditation.<sup>69</sup> Generally, second degree murders happen in the heat of an argument and the penalty for it is a mandatory sentence of life imprisonment.<sup>70</sup> Infanticide occurs when a mother with a disturbed mind, after giving birth or of consequent lactation, kills her newly-born child.<sup>71</sup> The maximum penalty for this offence is

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<sup>59</sup> A Ujjwal, 'Murder (Section 302) Under IPC' (2000 -2022) < <https://www.legalserviceindia.com/legal/article-7177-murder-section-302-under-ipc.html>> accessed 26 October 2022

<sup>60</sup> *Ibid*

<sup>61</sup> (1980) 2 SCC 684

<sup>62</sup> Ujjwal (n 59)

<sup>63</sup> H Saini, 'How Law Distinguishes between Different Types of Culpable Homicides' (2020) <<https://www.saini-law.com/how-law-distinguishes-between-different-types-of-culpable-homicides/>> accessed 26 October 2022

<sup>64</sup> *Ibid*

<sup>65</sup> CCC, s 222(5); G Parker, 'Criminal Law - Homicide - Constructive Murder - Canadian Criminal Code -- Section 212(c) - Historical Origins of Unlawful Object' [1979] (57)(1) *The Canadian Bar Review*; 212

<sup>66</sup> Saini (n 63)

<sup>67</sup> S Anand and K Roach, 'Inertia, Uncertainty, and Canadian Homicide Law: An Introduction to the Special Issue' [2010] (47) (3) *Alberta Law Review*; 245

<sup>68</sup> *Ibid*

<sup>69</sup> Anand and Roach (n 67) 244

<sup>70</sup> Saini (n 63)

<sup>71</sup> CCC, s 233

imprisonment not exceeding 5 years.<sup>72</sup> Manslaughter is defined as any culpable homicide which is not murder or infanticide.<sup>73</sup>

### 3.3 Homicide Act of the United Kingdom, 1957

Homicide is a serious violent crime with devastating consequences for the victims of the homicide, their family and friends, the offenders themselves and the community as a whole.<sup>74</sup> It may be lawful (such as killing during warfare, execution of the death penalty or the accidental killing of a boxer by his opponent) or unlawful (such as murder, manslaughter or infanticide).<sup>75</sup> Murder is a common law crime codified in the Homicide Act, 1957 (HA) and the Coroners and Justice Act, 2009 (CJA).<sup>76</sup> It is defined by Lord Coke thus:

Murder is when a man of sound memory, and of the age of discretion, unlawfully killeth within any country of the realm any reasonable creature in *rerum natura* under the king's peace, with malice aforethought, either expressed by the party or implied by law.<sup>77</sup>

Section 1 of HA provided:

Where a person kills in the course or furtherance of some other offence, the killing shall not amount to murder unless done with the same malice aforethought (express or implied) as is required for a killing to amount to murder when not done in the course or furtherance of another offence.<sup>78</sup>

From the above provision of the HA, three elements of the offence of murder are apparent: (i) malice aforethought (express or implied); (ii) a state of mind to kill or inflict grievous bodily harm on the person (*mens rea*)<sup>79</sup> and (iii) the act of killing or grievously hurting them (*actus reus*).<sup>80</sup>

Murder is further categorized into (i) first degree (ii) second degree (iii) voluntary manslaughter and (iv) involuntary manslaughter.<sup>81</sup> First degree murder attracts a mandatory death sentence and arises where a person killed either intentionally or had an intention to do serious injury while being aware that it could result in death.<sup>82</sup> Second degree murder attracts a discretionary life imprisonment and arises where (a) the offender killed with the intention of causing serious injury, or (b) where he intended to cause some

<sup>72</sup> Saini (n 63)

<sup>73</sup> CCC s 234; *R. v. Martineau* (1990) 2 S.C.R

<sup>74</sup> F Brookman, *Understanding Homicide* (SAGE Publications Ltd 2005) 1

<sup>75</sup> *Ibid* 6

<sup>76</sup> K Alexander, 'Principles of Common Law: Criminal Law – Part 2 - A selection of crimes' (2020)

<[https://www.ius.uzh.ch/dam/jcr:bb3bfbbd-7d74-4e28-a5eb-c34c21ea87b3/PCLHS20\\_L6\\_Criminal%2020A%20selection%20of%20crimes.pdf](https://www.ius.uzh.ch/dam/jcr:bb3bfbbd-7d74-4e28-a5eb-c34c21ea87b3/PCLHS20_L6_Criminal%2020A%20selection%20of%20crimes.pdf)> 2; accessed 27 July, 2023

<sup>77</sup> *Ibid* 4

<sup>78</sup> Alexander (n 76)

<sup>79</sup> *DPP v Smith* (1960) 3 All ER 161; *R v Smith* (1960) 2 All ER 450, 453

<sup>80</sup> *Ibid*

<sup>81</sup> *Ibid*

<sup>82</sup> Law Reform Commission. 'Report - Homicide: murder and involuntary manslaughter' (2008)

<[https://www.lawreform.ie/\\_fileupload/Reports/r87Homicide.pdf](https://www.lawreform.ie/_fileupload/Reports/r87Homicide.pdf)> 45; accessed 26 October 2022

injury or a risk of injury while knowing it could result in death or (c) where there is a partial defence to what would otherwise be first degree murder.<sup>83</sup>

Voluntary manslaughter covers cases where the accused intended to cause death or serious injury but under mitigating circumstances which fall under three categories: (i) that the accused was provoked;<sup>84</sup> or (ii) that the accused suffered from an ‘abnormality of mind’ such that his mental responsibility for his behaviour was substantially impaired (‘diminished responsibility’)<sup>85</sup> or (iii) he killed in pursuance of a suicide pact (where the killer is a survivor of the pact).<sup>86</sup> Involuntary manslaughter, on the other hand, covers cases where there was no intention to kill or to cause serious injury but the law considers the person who caused the death blameworthy.<sup>87</sup> Involuntary manslaughter can be constructive or reckless. Constructive manslaughter occurs where the defendant commits an unlawful and dangerous act likely to cause physical harm such that death is its accidental result.<sup>88</sup> Reckless manslaughter occurs where a person causes death through extreme carelessness or incompetence.<sup>89</sup>

The defence of self-defense at common law removes the culpability of a person who used criminal force either to defend himself from an attack or to prevent the commission of another crime.<sup>90</sup> The defense is also available to an accused who believes that he is under attack or is acting to prevent a crime.<sup>91</sup> This belief may be mistaken which does not have to be reasonable, provided that the defendant honestly believed that the circumstances constituted a threat and that the mistaken belief arose as a result of voluntary intoxication.<sup>92</sup>

#### 4.0 Institutional Framework

This paper presents an overview of the judiciary as the institution saddled with the responsibility of adjudicating on the offence of homicide in Nigeria.

#### 4.1 The Judiciary

The Criminal Justice System in Nigeria commences with the commission of a crime and continues with subsequent interventions by the law enforcement agencies of the system, flowing from the arrest, to the arraignment, to the trial, to sentencing and punishment of the offender. That is to say that a criminal trial involves the state, the society and the offender who commits the act and the process of determining the cause of death and the offender, behoves on the court. The Nigerian judiciary or courts has expressed its position on various facets on the incidents of homicide, in a plethora of cases.

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<sup>83</sup> *Ibid*

<sup>84</sup> HA s 3

<sup>85</sup> HA s 2

<sup>86</sup> *Ibid* s 4

<sup>87</sup> Brookman (n 74) 9

<sup>88</sup> *Ibid*, DPP v Newbury (1977) AC 500, 502-503

<sup>89</sup> Brookman (n 74) 9; R v Adomako (1995) 1 AC 171, 171; R v Finney (1874) 12 Cox CC 625, 625

<sup>90</sup> R v Williams (Gladstone) [1987] 3 All ER 411

<sup>91</sup> C Wang, ‘The Police Are Innocent As Long As They Honestly Believe: The Human Rights Problems With English Self-Defense Law’ [2018] (49)(3) *Columbia Human Rights Law Review*; 378

<sup>92</sup> *Ibid* 379; R v Williams (Gladstone) [1987] 3 All ER 415



In the case of *Moses Jua v. The State*,<sup>93</sup> it was the position of the court that in the presence of an evidence that a person caused the death of another, the offender can be convicted in the absence of the body of the deceased. The important consideration is the nexus between the act or omission and the death of the victim. In the *Moses Jua Case*<sup>94</sup>, a motorcycle was stolen and the appellant was suspected to have stolen the said motorcycle. The appellant was to be taken to the police station by a police officer, to tender the particulars of the motorcycle. However, that was the last time the said police officer was seen. Upon investigation and interrogation, the appellant confessed both orally and in writing, that he (the appellant) and other persons killed the police officer. The appellant and the said accused persons led a team of police officers to the scene of the crime, and upon arrival, the clothes last worn by the deceased, four (4) teeth and some strands were recovered at the scene but neither the deceased nor his body (corpse) was found or recovered. However, the appellant retracted his statement of killing the deceased but the trial court convicted the accused for the murder of the deceased even though the corpse or body was not found. Upon appeal, the decision of the trial court was upheld. Dissatisfied, the appellant appealed to the Supreme Court on the ground that the prosecution failed to prove the case beyond reasonable doubt as provided in Section 138 of the Evidence Act, 2011 and that the absence of a direct eye witness was fatal to the prosecution's case as there was also, the absence of a medical examination. He finally argued that the lack of the complete body of the deceased, is merely circumstantial that he caused the death of the deceased and thus, such circumstantial evidence adduced by the prosecution witnesses was not enough to convict him of the offence. The Supreme Court convicted the appellant to death sentence and considered the following, in dismissing the appeal by virtue of section 138 of the Evidence Act, 2011. If the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt.2). The burden of proving that any person has been guilty of a crime or wrongful act is subject to the provisions of section 141<sup>95</sup> of this Act and the person who asserts it whether the commission of such act is or not directly in issue in the action. The instant case can be considered as a compendium of all facets of murder touching on the Evidence Act, Right to Life, Lawful homicide, Unlawful homicide and the Death Penalty.

Statutory provisions with the aid of other decisions of courts has provided for the ingredients of the offence of murder or culpable homicide punishable with death which are as follows: (a) that the deceased, a human being had died, (b) that the death of the deceased was caused by the accused and (c) that the act or omission of the accused which caused the death of the deceased was intentional with the knowledge that death or grievous bodily harm was its probable consequence.<sup>96</sup>

In the more recent case of *Ogunleye Tobi v The State*,<sup>97</sup> the accused/appellant had a fight with the deceased on 20th November, 2009 and in the course of the fight the appellant used knife and inflicted lethal injury on the back and left leg of the deceased. The deceased bled profusely which led him to the state of unconsciousness and was thereafter rushed to the hospital. Sequel to that, the appellant was

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<sup>93</sup>(2010)1 NACLR 1 at 25

<sup>94</sup>*Ibid*

<sup>95</sup> Evidence Act, 2011

<sup>96</sup>*Adekunle v. The State* (2006)1 NWLR (Pt. 1000)712 at 736-737, *Ogba v The State* (1992)2 NWLR (Pt. 222) 164, *Nwaeze v. The State* (1996) 4 NWLR (pt. 443)375

<sup>97</sup>(2019) LPELR-46537(SC)

arrested and arraigned before the High Court and was tried convicted and sentenced. Dissatisfied by his conviction and sentence, the appellant appealed unsuccessfully to the Court of Appeal which affirmed his conviction and sentence by the High Court. Further piqued by the affirmation of his conviction and sentence by the Court of Appeal, the appellant further appealed to the Supreme Court which found no merit in the appeal and accordingly dismissed same. It should be noted, however, that in the case of guilty homicide punishable by death or not punishable by death, the ability of the accused's solicitor / advocate to prove beyond reasonable doubt that the accused had no defined intention of killing or causing grievous body damage – which could lead to the death of the deceased; establishes the basic fact that the instrument for the commission of the said offence was not systematically selected and arranged before the incidence, and was therefore used spontaneously in the situational context. Nonetheless, there are rare situations that are direct murder cases that the criminal justice system is unable to carry on the offender's death sentence. These concerns affect the offender's age, pregnancy, and the offender's state of mind at the time of the incident as clearly stated in Section 28 and 29 of the Criminal Code.<sup>98</sup>

## 5.0 Conclusion

Conclusively, it is clear that one murdering another human is a grievous act that has been frowned upon by historical societies. The legal and institutional frameworks placed a distinction between intentional and unintentional killing, the elements of ascertaining each and the different position on the punishment therewith. In addition, the legal necessity in addressing homicide serves as an arbiter to protect the offenders of intentional homicide from the relatives of the victims, by enforcing punishments which could be death penalties or long-term prison sentences, depending on the jurisdiction. However, countries like Canada have progressive legal regime on homicide as the offence attracts a maximum penalty for this offence is imprisonment not exceeding 5 years when compared with the laws of other countries like Nigeria that still accommodate death penalty. Nigeria though, has not completely repealed the death penalty for some homicide cases, which does not involve pregnant women and underage persons. It does appear that persistent attempts are being made by institutions (both municipal and international) to update laws and other legal frameworks on homicide, but in an attempt to modify punishment on homicide, caution should be considered, in order to avoid providing safe landing to offenders of criminal homicide.

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<sup>98</sup> (n 9) 109