

BORN AGAIN, EQUAL AGAIN: PENTECOSTAL THEOLOGY, LEGAL PLURALISM, AND RECONCEPTUALISING WOMEN'S RIGHTS IN AFRICA

Emeke Nelson Chegwe*

Abstract

Christianity in Africa is often criticized for supporting patriarchal norms, especially within Pentecostal traditions, which are seen as incompatible with gender equality. This view ignores both the diversity and evolving nature of Pentecostal theology in Nigeria. This paper challenges the idea that Christianity is always oppressive to women by exploring how Pentecostal teachings on rebirth, personal transformation, and equality before God can work alongside human rights ideals. It also considers Nigeria's context of legal pluralism, where customary, religious, and state laws overlap, sometimes protecting but often limiting women's rights. Using a doctrinal approach that combines legal analysis with feminist theology, the study examines how these multiple legal systems interact with Pentecostal beliefs to shape women's status. Findings show that Pentecostalism, when critically reinterpreted, contains egalitarian elements that align with both constitutional and human rights principles. The paper suggests that Pentecostal leaders embrace inclusive interpretations of scripture, policymakers collaborate with faith communities to harmonize laws, and advocacy groups use both legal and theological tools to advance gender justice within this plural legal landscape.

Key-Words: Gender Justice, Religious Reform, Women's Rights, Christian Belief, Pentecostal movement.

1. Introduction

In Nigeria, religion is not only a matter of faith, it actively influences gender identities, social standards, and legal consciousness. With its increasing influence, Pentecostalism offers both empowerment and the upholding of patriarchal structures.¹ The aim of this paper is to argue that the interaction between Nigeria's constitutional framework and Pentecostal theology creates an under-explored perspective where spiritual and legal identities meet and influence women's rights.² This study is driven by a central question: How do Pentecostal teachings on gender roles intersect with constitutional principles of equality and non-discrimination, and in what ways can these teachings be reinterpreted to advance gender justice? To address this inquiry, the paper employs an interdisciplinary framework that integrates feminist legal theory,³ African feminist

* Professor of Law, Department of Public Law, University of Delta, Agbor, Delta State, Nigeria. Email: emilomman@yahoo.com; emeke.chegwe@unidel.edu.ng. ORCID: <https://orcid.org/0000-0002-2707-9797>. Mobile Phone No: +2348033488330.

¹ M.A. Oduyoye, *Beads and Strands: Reflections of an African Woman on Christianity in Africa*, Oxford, Regnum Books, 2004.

² N. Wariboko, *Pentecostal Theology in Africa*, Eugene, OR, Wipf and Stock, 2017.

³ Schüssler Fiorenza E., *In Memory of Her: A Feminist Theological Reconstruction of Christian Origins*, London, SCM Press, 1983.

theology and constitutional analysis,⁴ offering a broad examination of how religious doctrine and legal norms jointly influence the pursuit of women's rights. According to this conceptual framework, theology is a topic of constant discussion that has the potential to either uphold inequality or pave the way for emancipation. Methodologically, this study combines doctrinal analysis of Nigerian constitutional provisions with an examination of Pentecostal teachings,⁵ alongside a critical review of feminist theological literature.⁶ Through this blended approach, it highlights how religious beliefs shape legal identities and how legal frameworks, in turn, influence faith, offering a fuller picture of the struggles women face as they navigate both law and belief. What makes this work distinctive is its integrated perspective: it does not present Pentecostalism as a fixed barrier to gender justice but rather as a living tradition with the potential to support it.⁷ Bringing doctrinal theology into conversation with constitutional law, the research suggests new ways to reconcile faith and rights, challenging the assumption that religion and gender equality are always at odds.⁸ It further positions Pentecostal teachings on rebirth and spiritual empowerment as valuable theological tools that when interpreted with care can affirm women's moral and legal personhood, enriching ongoing scholarly discussions in law, religion, and human rights.⁹

2. Gender and Christianity from African Perspective

The relationship between Christianity and gender in African thought is complex and full of contradictions. It is shaped by history, culture, and the tensions between different legal systems. Christianity has left a deep mark on Africa's religious life, cultural values, and laws, but its impact on gender is still debated. Many African feminist and postcolonial scholars point out that Christianity came not only as a religion but also as part of colonial rule, carrying gender expectations that pushed women to the rear. Missionaries and colonial authorities often reinterpreted local traditions and biblical texts in ways that reinforced male power, limiting women's roles in both the church and society.¹⁰ Thus, Christianity is often criticized for being male-centered, reinforcing women's subordination through its patterns of male leadership and imagery. Mercy Oduyoye¹¹ notes that the Bible is frequently interpreted through patriarchal

⁴ R. W. Jr. Galloway, Basic Constitutional Analysis, 28(4) 1988 *Santa Clara Law Review*, 913–954.

⁵ C.J. Kaunda, 'Minding the Pentecostal Paradox': Currents and Cross-Currents in Pentecostal Studies in Africa, *Religion Compass* (PenteSA), 2024.

⁶ U. King, *Feminist Theology from the Third World*, New York, Orbis Books, 1994; M.A. Oduyoye, *Beads and Strands: Reflections of an African Woman on Christianity in Africa*, Oxford, Regnum Books, 2004; J. Pobee, *Biblical Studies and Feminism in the African Context*, Ibadan, NABIS Western Zone, 2012; O. Olademo, 'New Dimensions in Nigerian Women's Pentecostal Experience: The Case of DODIM, Nigeria', 5(1) 2012 *Journal of World Christianity* 62–74, <https://doi.org/10.5325/jworlchri.5.1.0062>.

⁷ Wariboko (n2).

⁸ R. Marshall, *Political Spiritualities: The Pentecostal Revolution in Nigeria*, University of Chicago Press, 2009.

⁹ Andrew Stebbins, How Christianity Influenced the World's Law Systems, *Reflections* (blog), Reasons to Believe, 10 November 2015, <https://reasons.org/explore/blogs/reflections/how-christianity-influenced-the-world-s-law-systems>. Reasons to Believe

¹⁰ O. Nnaemeka, Nego-Feminism: Theorizing, Practicing, and Pruning Africa's Way, 29(2) 2004 *Signs: Journal of Women in Culture and Society*, 357–385, <https://doi.org/10.1086/378553>.

¹¹ Oduyoye (n1)

lenses, which elevate male authority while diminishing women's moral and legal autonomy. Pentecostalism, with its vibrant worship and strong conservative values, reflects these tensions clearly. Women play a central role in these churches, often as the most devoted members and primary caregivers, yet they are seldom given real decision-making power.¹² Even when women rise to roles as pastors or evangelists, their influence is often limited by systems that continue to favor male authority. Yet, this is not the whole story. Growing African Christian scholarship argues that religion should not be seen only as a tool of control but also as a source of freedom.¹³ Feminist theologians emphasize that women are not merely passive followers of doctrine but active participants who reinterpret scripture to challenge traditional gender roles. The Pentecostal belief in being "born again" highlights this transformative potential.¹⁴ For many women, rebirth is not only about spiritual renewal; it is also about redefining their identity beyond patriarchal labels. Through personal encounters with God, they gain confidence and a sense of divine legitimacy that empowers them to push back against male-dominated structures.¹⁵ This direct connection to the divine reinforces interpretations of scripture that equality and recognize women's moral agency without the need for male intermediaries.¹⁶

Christianity has also shaped women's access to education, healthcare, and leadership, often through church networks. These networks provided platforms for women to step into public life and advocate for justice.¹⁷ While church institutions have often upheld conservative roles for women, theology itself has also given women powerful tools for self-expression and social change even in legal spaces.¹⁸ Scholars like Sylvia Tamale emphasise that even in legal spaces.¹⁹ In African legal settings, where customary and religious laws often shape daily life, Christianity's influence is especially strong. Many women draw strength from Christian teachings to challenge oppressive norms and claim their rights. Pentecostalism, with its focus on divine justice, adds to this momentum by supporting the fight for gender equality. This vision fits well with constitutional protections like Section 42 of Nigeria's 1999 Constitution, which promises freedom from discrimination. Scholars advocate for merging religious and legal conversations, demonstrating that theology can provide a strong foundation for legal reforms that promote

¹² Wariboko (n2).

¹³ T.C. Sakupapa, Tracking the Decolonial in African Christian Theology, 112(2) 2023, *International Review of Mission* 202–217, <https://doi.org/10.1111/irom.12476>

¹⁴ R.A. Rodríguez Villanueva, *The Vulnerability of Women as a Subject and Contemporary Theological Action: A Review of the Genesis and Evolution of Feminist Theology*, in S. Castaños-Cervantes, A. Ojeda García & C. L. Reitz-Krueger (eds), *Working with Vulnerable Populations*, Cham, Springer, 2024, https://doi.org/10.1007/978-3-031-67710-6_17 SpringerLink

¹⁵ M. R. A. Kanyoro, *Introducing Feminist Cultural Hermeneutics: An African Perspective*, Cleveland, OH, Pilgrim Press, 2002. African Theology WorldwideGoogle Books

¹⁶ E. Chitando and S. Chirongoma, *Justice Not Silence: Churches Facing Sexual and Gender-Based Violence*, Eugene, OR, Wipf and Stock, 2013.

¹⁷ Tamale, Sylvia, *African Sexualities: A Reader*, Pambazuka Press, 2011.

¹⁸ Zurlo, Gina A., and Dave Coles, *Women, Leadership, and Movements: A Critical Look at the Past, Present, and Future*, *Journal for the Scientific Study of Religion*, 2024, -This study examines how Christian movements, including Pentecostal networks, have created public platforms for women's leadership and advocacy.

¹⁹ Tamale, Sylvia, *Exploring the Contours of African Sexualities: Religion, Law and Power*, 14(1) 2014 *African Human Rights Law Journal* 150–177.

women's rights.²⁰ Recent research challenges the idea that Christianity and Pentecostalism in particular is inherently oppressive to women. Instead, studies are looking at how believers experience and reinterpret doctrines in their own lives. Pentecostalism's emphasis on personal spirituality and divine empowerment creates room for feminist perspectives to take root. Scholars like Chammah Kaunda²¹ and Nimi Wariboko²² argue that when Pentecostal theology is read with a critical eye, it can become a force that supports gender equality rather than suppressing it. Despite this, scholarship often still emphasizes Christianity's patriarchal side, neglecting how women negotiate theological spaces in complex ways.

Pentecostalism in Nigeria: Historical Background and Doctrinal Developments

The story of Pentecostalism in Nigeria is deeply woven and shaped by a blend of local spiritual traditions and external evangelical currents. According to Onongha²³ and Odey,²⁴ its modern surge took off during the 1960s and 1970s, driven by a new generation of charismatic preachers. Among the most influential was Archbishop Benson Idahosa, whose dynamic ministry and the founding of the Church of God Mission in 1972 became a turning point, sparking a wave of revival that reshaped Nigeria's Christian landscape. Odey²⁵ His preaching on prosperity anchored in faith and the assurance of divine favour struck a powerful chord during the economic hardships of the 1980s, a time when many Nigerians were grappling with the tough realities brought on by structural adjustment policies.²⁶ In the midst of widespread disillusionment, the Pentecostal message of both spiritual renewal and material uplift offered hope and a sense of possibility.²⁷ Around this same period, ministries like the Grace of God Ministry also rose to prominence, marking the beginning of a transformative new chapter in Nigerian Pentecostalism.²⁸ Yet, it would be misleading to see Nigerian Pentecostalism as purely a modern import or a product of Western influence. Long before Western missionaries arrived, homegrown revivalist movements were already stirring across the region. These movements found expression in African-initiated churches such as Obere Okaiye and the Brotherhood of the Cross and Star, which blended Christian teachings with local spiritual practices, laying the groundwork for the

²⁰ C.J. Kaunda, Ndembu Cultural Liminality, Terrains of Gender Contestation: Reconceptualising Zambian Pentecostalism as Liminal Spaces, 73(3) 2017 *HTS Theological Studies/Theological Studies* 1–9, <https://doi.org/10.4102/hts.v73i3.3718>.

²¹ Zurlo (n20).

²² (n2) 9.

²³ K.O. Onongha, Pentecostalism, Power, and Politics in Nigeria, in A. Afolayan, O. Yacob-Haliso and T. Falola (eds), *Pentecostalism and Politics in Africa*, Cham, Palgrave Macmillan, 2018, 371–382, https://doi.org/10.1007/978-3-319-74911-2_18

²⁴ E.A. Odey, Differential Dimensions between Pentecostals and Aladura Movements in Nigeria, 17(1) 2020 *Lwati: A Journal of Contemporary Research*, 105–123.

²⁵ Ibid.

²⁶ Ibid.

²⁷ A. Ayuk, The Pentecostal Transformation of Nigerian Church Life, 5(2) 2002, *Asia Journal of Pentecostal Studies* 189–204.

²⁸ M.A.B. Gaiya, The Pentecostal Revolution in Nigeria, *Occasional Papers*, Copenhagen, Centre of African Studies, University of Copenhagen, 2002.

vibrant Pentecostal expressions that would later flourish.²⁹ These early spiritual traditions showed distinctly African ways of meeting God, with lively worship and a strong sense of community.³⁰

In the 1970s, Nigeria saw a surge of foreign evangelical influence through the visits of American preachers like T.L. Osborn and Ernest Angeley. Their large crusades inspired many Nigerians and shaped a new generation of pastors. Out of this influence came “new breed” ministries churches started by Nigerians but influenced by American Pentecostal styles in teaching, appearance, and preaching. The outcome was a unique mix where local revival energy blended with imported charismatic models, turning Nigeria into one of Africa’s most dynamic Pentecostal centers.³¹ Three main teachings define Nigerian Pentecostalism: being “born again,” baptism in the Holy Spirit, and prosperity. The idea of being born again is not just about personal faith it signals a break from the past. New converts often talk about freedom from ancestral curses, poverty, and failure, linking salvation to a better life.³² The Bible verse Galatians 3:28, which says, “in Christ there is neither male nor female,” is often quoted to promote spiritual equality. Yet, this equality rarely changes the gender hierarchies deeply embedded in church structures.³³ The second key belief, baptism in the Holy Spirit, is seen as God’s way of giving believers power. It is associated with speaking in tongues, healing, and prophecy, and evangelism gifts that, in theory, anyone can receive. Many Nigerian women have used this doctrine to claim spiritual authority as prophets, prayer leaders, and evangelists. However, despite these openings, church leadership remains mostly in male hands, showing a gap between spiritual gifts and institutional power.³⁴

The third teaching, prosperity theology, says that wealth, health, and social success are signs of God’s favor and can be achieved through faith and giving. Critics say this turns religion into a commodity, but for many women, it has created new opportunities. Women have entered faith-based business ventures, led women’s ministries, and managed church welfare programs. These roles make them not just caregivers but also economic contributors and moral leaders. Still, prosperity preaching often supports traditional gender roles, presenting men as providers and women as supporters. Even so, Pentecostal women have pushed back.³⁵ Leaders like Funke Felix-Adejumo has used these teachings to promote women’s empowerment.³⁶ Through their ministries,

²⁹ A.O. Ogunrinade and O.F. Abu, Christianity in Nigeria before Pentecostalism, 2(2) 2013 *Academic Journal of Interdisciplinary Studies*, 121–130, <https://doi.org/10.5901/ajis.2013.v2n2p121>. Richtmann

³⁰ A.C. Ukachi, *The Best Is Yet to Come: Pentecostal and Charismatic Revivals in Nigeria from 1914 to 1990s*, Xulon Press, 2013; N. Richman, *Nigerian Pentecostalism*, Database of Religious History (DRH), 19 August 2020, <https://doi.org/10.5281/zenodo.12572448>.

³¹ Richman (n30).

³² H.C. Achunike, J. U. Bibinu, and R. H. Kitause, Born Againism in Northern Nigeria: The Pentecostal Experience in Taraba State, 15(3) 2024 *MCS Social Sciences Journal*, 23–..., <https://doi.org/10.36941/mjss-2024-0019>.

³³ (n20)

³⁴ (n2)

³⁵ A. Morgan, Pentecostal Women Leaders: The Interplay of Egalitarian Theology, Feminism, and Pentecostalism, 38 (1) 2024 *Priscilla Papers*, 25–29; <https://www.cbeinternational.org/resource/pentecostal-women-leaders-the-interplay-of-egalitarian-theology-feminism>

³⁶ Funke Felix-Adejumo, advocating for gender inclusion and women’s empowerment at the Commonwealth Africa Summit, *THISDAY*, 25 March 2022.

they have combined biblical teaching with health campaigns, leadership training, and education, showing how conservative theology can be reshaped to achieve progressive goals.³⁷ One reason women can take part in Pentecostal activities is the movement's decentralised and flexible nature. In many urban churches, women lead prayer groups, charity efforts, and children's ministries roles that, while unofficial, earn them respect and influence. These positions sometimes open doors to wider community leadership beyond the church. However, tensions remain. On one side, Pentecostal theology promises transformation and empowerment for all. On the other, its teachings on marriage and family often reinforce male authority. Sermons frequently cite Ephesians 5:22–25 to support male leadership at home, and many church rules limit women's access to senior leadership, often placing them under male oversight.³⁸ This creates a paradox: Nigerian Pentecostalism offers spiritual freedom but also enforces gendered restrictions. Its doctrines bring hope, healing, and social mobility, yet they also risk maintaining patriarchal norms. Still, many women resist these limits, using Pentecostal teachings themselves as tools to challenge and change their position. For scholars, religious leaders, and activists, these inner struggles are significant. Pentecostalism in Nigeria is not just a religious movement it is deeply personal and undeniably political.³⁹

Challenging the Idea that Christianity is inherently Patriarchal

Christianity is often criticised as a religion that supports male dominance and female submission. This perception stems from selective readings of passages like 1 Corinthians 14:34–35 and Ephesians 5:22–24, which have historically been used to justify male authority in both church and home. In African legal systems, such interpretations have reinforced gender-discriminatory laws, particularly in areas such as marital authority, property rights, and decision-making. For example, laws influenced by Christian doctrine have frequently given men primary control over property and guardianship within marriage.⁴⁰ Feminist theologians, such as Rosemary Radford Ruether and Elisabeth Schüssler Fiorenza strongly challenge these interpretations.⁴¹ They argue that such biblical texts reflect the cultural norms of their time rather than universal divine commands. Fiorenza's latest work calls on readers to question patriarchal readings and uncover the liberating messages within scripture- an approach that parallels modern interpretations of human rights law, where legal norms adapt and evolve alongside social progress.⁴² David Stewart's *Hermeneutics of*

³⁷ K.O. Onongha, Pentecostalism, Power, and Politics in Nigeria, in A. Afolayan, O. Yacob-Haliso and T. Falola (eds), *Pentecostalism and Politics in Africa*, Cham, Palgrave Macmillan, 2018, 371–382, https://doi.org/10.1007/978-3-319-74911-2_18

³⁸ A. E. Amaefule, 'Women in Neo-Pentecostal Churches in Nigeria', 31(1) 2022 *Feminist Theology*.

³⁹ O. Olademo, *New Dimensions in Nigerian Women's Pentecostal Experience: The Case of DODIM, Nigeria*, 5(1) 2012 *Journal of World Christianity* 62–74.

⁴⁰ S.O. Ademiluka, The Church and Gender Equality in Africa: Questioning Culture and the Theological Paradigm on Women Oppression, 2021 *Asian Journal of Social Science & Humanities*, <<https://www.researchgate.net/publication/272878383>>

⁴¹ R.R. Ruether, *Sexism and God-Talk: Toward a Feminist Theology*, Boston, Beacon Press, 1983; E. Fiorenza Schüssler, *But She Said: Feminist Practices of Biblical Interpretation*, Boston, Beacon Press, 1992.

⁴² Rita Faraj, "Elisabeth Schüssler Fiorenza: The Dance of Hermeneutics and the Reconstructionist" (2024) 3(1-2) *Münster Journal for Islamic and Philosophical Studies* 71–94.

Suspicion approach advocates for interpretation that seeks to free and empower women and other oppressed groups, beginning with the biblical text itself. It treats the text like a crime scene, searching for traces of silenced voices and clues that can lead to the liberation of marginalized people.⁴³ It also involves reading the text against its male-centered bias to uncover new meanings that have not yet been shared with the faith community. Musa Dube similarly notes that scripture has often been manipulated to maintain patriarchal systems under the guise of morality, and their scholarship highlights the importance of recognising how religious narratives shape and at times distort gender roles.⁴⁴ Pentecostal theology provides a striking example of this adaptability. Core doctrines such as spiritual rebirth, equality before God, and empowerment by the Holy Spirit offer alternatives to traditional gender hierarchies. These beliefs affirm that all believers, regardless of gender, can teach, prophesy, and lead. If embraced fully, this spiritual egalitarianism has significant legal implications: it challenges gendered legal hierarchies and supports reforms in family law, succession, and civic participation. J. Asamoah-Gyadu observes that the “born again” experience symbolically disrupts entrenched social orders, including gender-based subordination.⁴⁵ Critics of Pentecostalism often point to its male-dominated leadership, yet they overlook how women actively claim influence within the movement.⁴⁶ Even without formal authority, women lead prayer groups, manage church resources, and shape decisions, exercising informal leadership that legal systems rarely acknowledge. This raises an important question: should the law only recognise formal leadership roles, or also affirm the informal power that women wield in their communities?⁴⁷ African feminist legal debates reflect this tension. Teresa Okure argues that religion is fundamentally incompatible with women’s rights,⁴⁸ while Michael Welker maintains that both theology and law can be reinterpreted to advance justice.⁴⁹ Nigerian Pentecostalism offers practical examples of women reshaping religious spaces. Leaders such as Pastor Funke Felix-Adejumo⁵⁰ and Rev. Dr. Mercy Ezekiel⁵¹ actively challenge gender norms through their teachings. They promote spiritual empowerment, economic independence, and women’s legitimacy in leadership, helping to redefine women’s roles both in the church and in public life. These examples demonstrate that theology can enhance legal awareness, encouraging

⁴³ D. Stewart, *The Hermeneutics of Suspicion*, 3(3) 1989, *Literature and Theology* 296–307, <https://doi.org/10.1093/litthe/3.3.296> accessed 23 June 2025.

⁴⁴ M.W. Dube, *Postcolonial Feminist Interpretation of the Bible*, St. Louis, Chalice Press, 2000.

⁴⁵ J.K. Asamoah-Gyadu, *Contemporary Pentecostal Christianity: Interpretations from an African Context*, Eugene, OR, Wipf and Stock, 2013

⁴⁶ E. Akpanke Odey & G.A. Onah, *Pentecostalism and Women Leadership: Paradigm for Gender Re-Construction in Nigeria* (2020) 7(1) *International Journal of Pedagogy, Innovation and New Technologies* 76–83, DOI: 10.5604/01.3001.0014.4461.

⁴⁷ E.M. Butler-Cooper, *Women Daring to Lead in the Church*, in *Encyclopedia of Diversity, Equity, Inclusion and Spirituality*, Cham, Springer, 2024, 1–7, <https://doi.org/10.1007/978-3-031-32257-0_33-1> accessed 23 June 2025.

⁴⁸ T. Okure, *To Cast Fire upon the Earth: An Introduction to the History of the Missionary Work of the Society of the Holy Child Jesus during the 19th and 20th Centuries*, 2000.

⁴⁹ M. Welker, *What Could Christian Theology Offer to the Disciplines of the Law?*, 32(1) 2017 *Journal of Law and Religion* 46–52.

⁵⁰ Funke Adejumo, *Funke Felix-Adejumo, Leading Women to the Winning Edge*, *BusinessDay NG*, 11 January 2015.

⁵¹ Biography of Rev. Dr. Obiora and Rev. Dr. Mercy Ezekiel, *Believers Portal*, <<https://cpmeketarea.wordpress.com/2012/07/21/profile-on-rev-dr-obiora-and-rev-dr-mercy-ezekiel/>> accessed 23 June 2025.

women to claim their rights and visibility. The belief that Christian doctrine is inherently patriarchal ignores its potential for liberating reinterpretation. It also upholds a false divide between religious and secular spheres. Any legal critique must take into account the nuanced ways African women engage with and transform religious traditions. They are not passive followers but active interpreters, using faith to negotiate rights and reshape gender relations. A balanced legal approach to Pentecostal theology is therefore necessary. Such an approach should acknowledge both its oppressive histories and its liberative possibilities. Emphasising doctrines of spiritual rebirth, divine calling, and the equal distribution of the Holy Spirit's gifts, Pentecostalism can be aligned with a framework of gender justice. In this way, theology and law can work together to dismantle patriarchy and promote equality.

Reconceptualising Christianity and Gender Equality in Nigeria

Nigeria offers a unique setting to explore how Pentecostalism shapes gender relations. Over the past fifty years, Pentecostalism has influenced not just religious life, but also culture, politics, and civic engagement. Women make up the majority in many Pentecostal congregations and play a crucial role in keeping the churches vibrant. However, they often remain under male authority, reinforced through sermons, leadership structures, and teachings that emphasize female submission and domestic roles. As scholars have noted, Pentecostal discourses often uphold gender hierarchies under the banner of divine order and family values.⁵² Yet, to view Pentecostalism only as oppressive would miss how Nigerian women use its teachings to carve out space, redefine their identities, and push back against injustice.⁵³

This paper challenges the assumption that Christianity especially Pentecostalism is inherently at odds with gender equality in Nigeria. While patriarchal interpretations and institutional practices do marginalize women, such a view oversimplifies a complex tradition. It also overlooks how Pentecostal theology itself contains resources that women use to affirm their dignity, moral worth, and legal standing, both in religious and secular settings. When critically engaged, Christianity can actually serve as a platform for feminist and rights-based advocacy. Research shows that Pentecostalism's rapid growth has revived certain biblical teachings that are reshaping Nigerian Christianity.⁵⁴ Although its effects are mixed, Pentecostalism has created spaces where both men and women participate actively, opening opportunities for more balanced gender relations.⁵⁵ Women's leadership roles within these communities offer new ways to rethink gender

⁵² Adolphus Ekedimma Amaefule, "Women in Neo-Pentecostal Churches in Nigeria: Chimamanda Ngozi Adichie's *Americanah*, and the Mainline Churches in Contemporary Nigeria" 31(1) (2022) *Feminist Theology* 31(1).

⁵³ Oyeronke Olademo, "New Dimensions in Nigerian Women's Pentecostal Experience: The Case of DODIM, Nigeria," 5(1) (2012) *Journal of World Christianity* 62–74

⁵⁴ Victoria Oladipupo, "*African Pentecostalism and Gender: An Analysis of the Transnational Leadership Roles of Women in the Redeemed Christian Church of God* (Lagos, Nigeria, and London, United Kingdom)," Doctoral thesis, University of Roehampton, awarded 11 March 2025.

⁵⁵ Kehinde Oluwatoyin Adabembe, "Pentecostalism and Women Development in the Redeemed Christian Church of God: A Model for National Development" 8 (2023) *International Journal of Research and Innovation in Social Science* 2049–2061, DOI: 10.47772/IJRISS.2023.71066.

dynamics in Nigeria at large.⁵⁶This paper focuses on three key doctrines spiritual rebirth, spiritual gifts, and equality before God to show how Pentecostal theology can become a tool for liberation with legal and social consequences.⁵⁷

The doctrine of being “born again” lies at the heart of Pentecostal identity. It represents a radical transformation of the individual and a redefinition of social identity. It implies that all believers, regardless of gender, class, or ethnicity, stand as equals before God. Galatians 3:28 is often cited in this context: “there is neither male nor female” in Christ. Although this principle is not always practiced institutionally, it provides a theological foundation for challenging exclusionary norms.⁵⁸Many women interpret their spiritual rebirth as a call to transcend traditional roles, reclaim agency, and assert their voices within both church and society.⁵⁹

The doctrine of spiritual gifts also disrupts rigid gender roles. Pentecostalism teaches that the Holy Spirit grants gifts such as prophecy, healing, leadership, and teaching to all believers, regardless of gender. This challenges the idea that men are spiritually superior. In many Nigerian Pentecostal churches, women lead prayer meetings, preach, and exercise prophetic gifts. Some wield greater influence than male pastors, despite lacking formal titles. Their spiritual authority, recognized by congregations, gives them real power, even if not formally codified.⁶⁰

The third key doctrine, equality before God, mirrors legal ideals. Pentecostalism’s teaching of direct access to God undermines the idea that men are spiritual gatekeepers and reinforces equal spiritual standing. Legally, this resonates with Section 42 of Nigeria’s 1999 Constitution, which guarantees freedom from discrimination and equality before the law. This theological vision supports broader claims for gender justice, enabling religious arguments to strengthen civic advocacy. For Pentecostal women, appealing to the Holy Spirit becomes a way to claim moral authority and legitimacy to lead, fostering a legal consciousness that helps them demand justice, autonomy, and recognition.⁶¹Real-life examples illustrate these dynamics. Pastor Funke Felix-Adejumo, now a bishop in the Pentecostal Fellowship of Nigeria, co-leads Agape Christian Ministries and runs initiatives such as the Funke Felix Adejumo Foundation and Grace Orphanage that empower women through education, economic support, and leadership training.⁶² Similarly, Rev. Dr. Mercy Ezekiel, co-pastor of Christian Pentecostal Mission International, blends pastoral

⁵⁶ Elizabeth Akpanke Odey and Gregory Ajima Onah, “Pentecostalism and Women Leadership: Paradigm for Gender Re-Construction in Nigeria” 7(1) (2020) *International Journal of Pedagogy, Innovation and New Technologies* 76–83, DOI: 10.5604/01.3001.0014.4461.

⁵⁷ V. Oladipupo, *African Pentecostalism and Gender: An Analysis of the Transnational Leadership Roles of Women in the Redeemed Christian Church of God* (Lagos, Nigeria, and London, United Kingdom) (PhD Thesis, University of Roehampton 2025).

⁵⁸ A. E. Amaefule, ‘Women in Neo-Pentecostal Churches in Nigeria: Chimamanda Ngozi Adichie’s *Americanah*, and the Mainline Churches in Contemporary Nigeria’ (2022) 31 *Feminist Theology* 34–50.

⁵⁹ O. Olademo, ‘New Dimensions in Nigerian Women’s Pentecostal Experience: The Case of DODIM, Nigeria’ (2012) 5 *Journal of World Christianity* 62–74.

⁶⁰ O. Adeboye, ‘Women and Pentecostalism in Africa: Mediating Power and Social Change’ (2018) 48 *Journal of Religion in Africa* 236–258.

⁶¹ I. M. Idumwonyi, *Crashed Realities? Gender Dynamics in Nigerian Pentecostalism* (Brill 2023).

⁶² (n57).

work with education, healing, and humanitarian programs targeting youth and women.⁶³ Their ministries merge theology with social empowerment, promoting economic independence and self-confidence among women. Working at the intersection of faith and civic life, they challenge the boundaries separating religious belonging from legal citizenship, showing how Pentecostal language can affirm women's rights and reshape gender norms from within tradition.⁶⁴ While this research acknowledges Pentecostalism's patriarchal elements, it also insists that theology is a contested space capable of both exclusion and emancipation. By highlighting doctrines that promote equality, transformation, and divine calling, it reimagines the role of Christian theology in Nigeria's gender and legal discourse. It argues for moving beyond the idea of religion as inherently opposed to feminism, toward recognizing it as a complex, pluralistic, and potentially transformative ally in the pursuit of justice.⁶⁵

3. Integrating Human Rights into Nigerian Pentecostal Theology for Gender Equality

In Nigeria, Christianity has long shaped views on gender roles, occasionally promoting the subjection of women. However, there are freeing aspects in the same theology. Human rights values of inherent dignity are firmly aligned with the notion of *imago Dei*,⁶⁶ which states that all persons are made in God's image. However, passages like Ephesians 5:22 and 1 Timothy 2:12 have frequently been construed to support the exclusion of women from positions of leadership. A vehicle for opposing such patriarchal interpretations and advancing an inclusive interpretation of scripture is provided by the human rights framework.

Many feminist theologians support a "hermeneutics of suspicion," which calls for a critical analysis of the Bible in order to expose patriarchal distortions.⁶⁷ Their writings demonstrate how theology may change while remaining true to its basic foundations. This is especially important for Nigeria, where cultural resonance is required for reinterpretation rather than the imposition of external values. Naturally, the tenets of Pentecostalism spiritual rebirth, the priesthood of all believers, and empowerment by the Holy Spirit have implications for equality. The notion that men and women are equally called to spiritual power is supported by these ideas. Despite conventional resistance, Pentecostal focus on divine calling frequently empowers women to take on leadership roles, subverting strict gender norms. It is possible to change attitudes in society and religious communities by utilizing this natural drive for equality. Section 42 of the 1999 Constitution states that discrimination is already illegal in Nigeria (as amended, s.42). However, enforcement is hampered by cultural and religious hurdles. Presenting gender equality as both a constitutional right and a heavenly commandment, incorporating human rights within Pentecostal

⁶³ K. O. Adabembe, 'Pentecostalism and Women Development in the Redeemed Christian Church of God: A Model for National Development' (2023) 8(7) *International Journal of Research and Innovation in Social Science* 2049–2061 <https://doi.org/10.47772/IJRIS.2023.71066>.

⁶⁴ R. I. J. Hackett, 'Women's Religious Activism in Nigeria: New Wine in Old Wineskins?' (2016) 46 *Journal of Religion in Africa* 240–270.

⁶⁵ Amaefule (n 58).

⁶⁶ Genesis 1:27

⁶⁷ R.R. Ruether, *Sexism and God-Talk: Toward a Feminist Theology* (Beacon Press 1983); E. Schüssler Fiorenza, *In Memory of Her: A Feminist Theological Reconstruction of Christian Origins* (Crossroad 1983).

theology enhances campaigning. Support from religious communities can increase the persuasiveness and social acceptability of legislative reforms. Pentecostal churches have the power to lead change by adjusting their teachings. However, critics warn that using human rights language may feel foreign because it often reflects Western ideas. Therefore, any change in theology should involve dialogue and be rooted in local experiences, spiritual practices, and scripture. Instead of seeing faith only as oppressive, Saba Mahmood's idea of the "politics of piety" shows that believers also have moral agency and make their own choices.⁶⁸ This viewpoint guarantees that rights-based changes uphold religious beliefs while promoting gender parity. On a larger scale, Nigeria's responsibilities under international law are also supported by the alignment of religion with human rights. Nigeria has accepted the African Charter on Human and Peoples' Rights 1981, which upholds equality and dignity for everyone. Legal pluralism permits religious rules to impact social norms and family law, but they must be consistent with international and constitutional norms. By reaffirming that equality is both a spiritual and legal need, faith communities are essential to closing this gap.

Exploring Gender, Constitutional Principles and Christian Doctrine

Religion has a significant influence on both public and private life in Nigeria. Because of its emphasis on biblical interpretation, Pentecostal Christianity frequently functions independently. However, it operates within a legal framework based on the equality and nondiscrimination rights included in the constitution. Resolving conflicts between gender equity and religious activities requires balancing Christian theological standards with constitutional legality. The Federal Republic of Nigeria's 1999 Constitution makes gender equality a top priority. Section 42(1) states that no person should be deprived because of their birth circumstances and forbids discrimination on the basis of sex, religion, or political ideology. Despite unequal implementation, this section creates a legal standard for assessing the actions of religious communities, giving human rights campaigners and feminist law experts a constitutional foundation to challenge gender inequalities ingrained in Pentecostal doctrine.

Tensions still exist in spite of these fundamental safeguards. Doctrines that emphasize female subservience, male headship in marriage, and prohibitions on women speaking or holding high positions in the church are frequently promoted by Nigerian Pentecostalism. Such actions go against the principles of the constitution by institutionalizing gender inequality. The judicial system's unwillingness to step in under the pretense of religious autonomy upholds patriarchal standards even in communities with educated and politically active members.⁶⁹ But there is a chance for change because of this disagreement. In addition to being a legal document, the Constitution can be used as a framework for interpreting religious doctrine. This is done to promote theological thought that is consistent with human rights and Christian principles like justice, love, and human dignity, rather than to secularize religious organizations.

⁶⁸ S. Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton University Press 2019).

⁶⁹ C.C. Okereke and O. S. Adiele, Ministerial Ordination and Gender Inequality in Selected Pentecostal Churches in Nigeria, 7(3) 2023, *International Journal of Academic Multidisciplinary Research*, 187–201.

According to Ebenezer Obadare, democracy may be strengthened and society made more inclusive by aligning religious beliefs with constitutional ideals.⁷⁰ He contends that without abandoning faith, scripture may be understood to promote equality.⁷¹ The theological and legal foundation for gender equality is simultaneously affirmed by Section 42 and verses like Galatians 3:28, which states, "There is neither male nor "...female... for you are all one in Christ Jesus." An "incarnational hermeneutic" is advocated by Christian feminist theologians from Nigeria, such as members of the Circle of Concerned African Women Theologians.⁷² This approach ensures that theology tackles gender inequality in the actual world by placing women's lived experiences at the heart of scripture interpretation. These academics aim to undermine interpretations that restrict women's power in civic and religious domains by presenting gender equality as both a constitutional and spiritual truth.⁷³ Nigerian Pentecostal churches must reevaluate how their hierarchy conforms to equality provisions in the constitution. Keeping women out of key leadership roles is against both constitutional rights and the need for more in-depth theological analysis.⁷⁴ Similarly, because they frequently result in psychological, emotional, and societal suffering, ideologies that support female subordination should be thoroughly analyzed. While religious communities sometimes oppose legislative reforms pertaining to gender equality, domestic abuse, and reproductive rights, portraying these reforms as manifestations of Christian principles like justice, dignity, and compassion may foster wider acceptance.⁷⁵ Collaboration is crucial. To create common ground, theologians, legal experts, civil society groups, and church leaders must collaborate while referencing both scripture and constitutional norms. Churches may become places of freedom rather than oppression when the idea that all people are equal before God is in line with constitutional equality. Christian theology that incorporates constitutional ideas provides a means of practicing religion that respects civic duty and spiritual values.⁷⁶

4. How Faith Impact Gender Equality In Nigeria

Section 42 of the 1999 Constitution of the nation ensures equality for men and women. This part emphasizes equal opportunity in all areas of life and forbids discrimination based on sex. However, the doctrines of many Pentecostal churches, which read the Bible in ways that support male leadership and female obedience, sometimes conflict with these legal concepts. Scriptures like as Ephesians 5:22–24 and 1 Timothy 2:11–12 are frequently used to support these

⁷⁰ E. Obadare, *Pastoral Power, Clerical State: Pentecostalism, Gender, and Sexuality in Nigeria* (University of Notre Dame Press 2022).

⁷¹ Ibid.

⁷² M. A. Oduyoye and M. Kanyoro (eds), *The Will to Arise: Women, Tradition, and the Church in Africa* (Orbis Books 1992).

⁷³ A. Ayanga, 'Gender Equality as Constitutional and Spiritual Truth in African Theology' (2016) 30 *Theological Studies Review* 77.

⁷⁴ O. Olutunde and J. Ehioghae, 'Pentecostalism and Gender Equality in Nigeria: A Theological Appraisal' (2018) 21 *Ilorin Journal of Religious Studies* 55.

⁷⁵ O. Adesanya, 'Reimagining Gender Justice in Nigerian Christianity' (2022) 14 *African Journal of Gender and Religion* 102

⁷⁶ E. Chitando and G. Chirongoma, *Justice Not Silence: Churches Facing Sexual and Gender-Based Violence* (WCC Publications 2012).

hierarchical roles.⁷⁷ In addition to being theological, these views have social influence and influence how women are viewed in communities, churches, and families.

In Nigeria, Pentecostalism has expanded rapidly and has had a profound impact on public opinion, morality, and politics. Pastors have become not only spiritual authorities but also influential social and political actors, wielding power that extends into statecraft, law enforcement, and even women's rights debates.⁷⁸ Their growing visibility in media and politics means that constitutional safeguards on gender equality are often mediated, and sometimes undermined, by Pentecostal interpretations of gender roles.⁷⁹ In many church settings, women are still primarily constructed as mothers, caregivers, and helpmates. While these roles are publicly celebrated, they nonetheless curtail women's autonomy and obstruct their participation in leadership and decision-making processes.⁸⁰ Yet, within Pentecostal circles there is an emerging counter-movement to reinterpret scripture in ways that affirm equality and human dignity. Passages such as Galatians 3:28, which declares that in Christ "there is neither male nor female," have been deployed to challenge entrenched patriarchal norms. This hermeneutical shift has been encouraged by the rise of educated clergy and the growing involvement of women in theological training and ministry. Female pastors and theologians now openly contest conventional wisdom, asserting that gender equality aligns with the spirit of Christianity rather than contradicting it.⁸¹ Although resistance remains strong many congregations fear that new interpretations threaten cultural identity and spiritual authority such debates are increasingly unavoidable.⁸² The challenge, therefore, is not merely legal but theological: how can Pentecostal principles be reconciled with constitutional equality in a way that honours religious tradition while advancing justice? The answer lies in acknowledging the enduring power of Pentecostal pastors to shape public morality and policy, while also recognising the internal reformers who are re-imagining scripture as a resource for equality rather than subjugation.

5. Leveraging Faith for Gender Justice

Gender inequality in Nigeria is deeply rooted in patriarchal traditions, reinforced by both religious and societal structures. Pentecostal Christianity has often faced criticism for perpetuating gender disparity, particularly through male-dominated leadership and doctrines. Scholars such as Obadare argue that while Pentecostalism grants women spiritual authority within prayer and worship, the institutional framework of the church restricts women to supportive roles, thereby

⁷⁷ United Nations (1979) *Convention on the Elimination of All Forms of Discrimination against Women*. United Nations Treaty Series, 1249, 13.

⁷⁸ (n70).

⁷⁹ Paul O. Oderinde, Ifeoma Okoye and Olusegun A. Adegboyega, 'Roles of Pentecostalism in the Political and Economic Development of Nigeria between 1999 and 2015' (2023) 2(2) *International Journal of Contemporary Research in Humanities* 45.

⁸⁰ Olusola Ogunnubi, 'Pentecostalism and its Implications for Socio-Economic Development in Post-Independence Nigeria' (2024) 13(1) *Kasem Bundit Journal of Multidisciplinary Research* 77.

⁸¹ Daniel Jordan Smith, 'The Pentecostal Prosperity Gospel in Nigeria: Paradoxes of Corruption and Inequality' (2021) 52(1) *Current Anthropology* 67.

⁸² Benson O. Igboin, 'Prophet-Centrism in Church Advertising: A Visual Cultural Reading of Nigerian Church Adverts' (2023) Special Issue *Journal for Semitics* 45.

excluding them from substantive leadership.⁸³ Despite these challenges, there is a growing movement within Pentecostalism that seeks to reinterpret its theology to support gender equality. Religious thinkers such as Nomatter Sande have begun to highlight egalitarian elements in Pentecostal doctrine that, when re-examined, can empower women and challenge entrenched gender norms.⁸⁴ Annelin Eriksen's research provides a nuanced view, showing that women's conversion to Pentecostalism often brings access to social support, healing, and new forms of agency, but also simultaneously reinforces gendered expectations that limit women's autonomy.⁸⁵ This tension underscores how Pentecostalism can be both a site of empowerment and a mechanism of control. As a result, the emphasis on women's empowerment and community reform has become central to contemporary studies of Pentecostalism. This paper therefore explores how Pentecostalism can serve as a tool for gender justice by reshaping power dynamics, integrating human rights into Christian teachings, and emphasising the role of religious leaders and policymakers in promoting gender equality.⁸⁶

Uncovering the Hidden Equality in Pentecostal Belief

Despite being frequently linked to traditional gender norms, Pentecostalism has a number of underutilized egalitarian components that might be used to advance gender justice. A profound reimagining of human equality and value is provided by the core Pentecostal idea of spiritual regeneration. Pentecostal theology emphasizes the "born again" experience, which involves a whole reinvention of one's identity before God, in addition to a personal spiritual regeneration. Because Pentecostal theology teaches that all believers, irrespective of gender, are equally gifted by the Holy Spirit for ministry, prophecy, and leadership, it offers a framework that transcends conventional gendered hierarchies within Christianity.⁸⁷ The movement's emphasis on direct encounter between the believer and God further undermines traditional patriarchal structures that have historically positioned men as mediators between women and the divine.⁸⁸ Even though women are often excluded from formal clerical offices in many Pentecostal denominations, they are nevertheless encouraged to assert spiritual authority in practical ways by leading prayer groups, engaging in evangelism, and exerting influence on church policy and communal life.⁸⁹ Egalitarianism in Pentecostalism is also supported by the biblical idea of equality before God. Scriptures that contradict patriarchal views of the Bible, such as Galatians 3:28, which declares

⁸³ (n70).

⁸⁴ Nomatter Sande, *Pentecostalism and the Empowerment of Women in Africa* (Harare: University of Zimbabwe Publications, 2016).

⁸⁵ Annelin Eriksen, 'Gender and Pentecostalism: Conversion, Empowerment and Social Change' (2014) 23(2) *Religion and Gender* 137.

⁸⁶ Abd Rahman and Muhammad Arhad et al, 'Pentecostalism, Human Rights and Gender Justice in Contemporary Africa' (2025) *Journal of Religion and Society* (forthcoming).

⁸⁷ Ezra Chitando and Sophia Chirongoma (eds), *Gender and Christianity in Africa: The Impact of Religious Traditions on Gender Roles* (Pietermaritzburg: University of KwaZulu-Natal Press, 2008).

⁸⁸ Ogbu Kalu, *African Pentecostalism: An Introduction* (Oxford: Oxford University Press, 2008).

⁸⁹ Ruth Marshall, *Political Spiritualities: The Pentecostal Revolution in Nigeria* (Chicago, IL: University of Chicago Press, 2009).

that "there is neither Jew nor Greek, slave nor free, male nor female," are frequently emphasised. These passages offer a solid basis for promoting gender equality in both spiritual and social contexts, despite the fact that they are usually disregarded or undervalued in many Christian groups. If highlighted, these egalitarian components have the power to change how women are viewed in Pentecostalism and promote a more inclusive and just theology. Another way to question gender norms is through Pentecostalism's emphasis on the gifts of the Spirit. The idea that all Christians possess spiritual abilities including leadership, teaching, and prophecy highlights the fact that these abilities are gender-neutral. The idea that women's responsibilities in the church and society should be restricted is challenged by the call for women to use their abilities for the promotion of God's kingdom and the edifying of the church.

Can Nigerian Patriarchy Be Dismantled through Pentecostalism?

Pentecostalism in Nigeria holds significant potential to challenge patriarchal traditions, both within church structures and in wider society. Unlike older missionary denominations that often maintain rigid gender hierarchies, Pentecostalism places strong emphasis on personal spiritual experience and a believer's direct access to God.⁹⁰ This openness allows greater room for reinterpretation of scripture and the application of Christian principles to everyday social realities, creating a fertile ground for questioning long-standing patriarchal norms that limit women's rights and opportunities.

One of the most striking examples of this potential is the visibility of women in Pentecostal leadership. Prominent figures such as Pastor Funke Felix-Adejumo and Rev. Dr. Mercy Ezekiel have used their ministries to promote women's empowerment, offering models of leadership that disrupt the assumption of male spiritual authority.⁹¹ Through their preaching and outreach, these leaders advocate not only for women's spiritual growth but also for their economic independence and full participation in church and society. Their presence underscores how Pentecostal platforms can be leveraged to reframe women's roles in ways that challenge conventional patriarchal ideologies. Moreover, Pentecostal theology's focus on the power of the Holy Spirit reinforces the idea that transformation both individual and collective is possible.⁹²

This theological orientation emboldens women to challenge restrictive cultural expectations by stepping into leadership roles, voicing resistance to injustice, and demanding greater recognition of their rights. Such participation also extends beyond the pulpit into broader community life. In many Pentecostal congregations, women spearhead initiatives addressing gender-based violence, health awareness, and discriminatory practices in law and policy.⁹³ By grounding their activism in Pentecostal spirituality, these women reframe the struggle against patriarchy not merely as a political project but as a sacred calling. On the long run, Pentecostalism provides a leverage for

⁹⁰ Ruth Marshall, *Political Spiritualities: The Pentecostal Revolution in Nigeria* (Chicago, IL: University of Chicago Press, 2009).

⁹¹ Ogbu Kalu, *African Pentecostalism: An Introduction* (Oxford: Oxford University Press, 2008).

⁹² Nimi Wariboko, *Nigerian Pentecostalism* (Rochester, NY: University of Rochester Press, 2014).

⁹³ Asonzeh Ukah, 'The Redeemed Christian Church of God (RCCG), Nigeria: Local Identities and Global Processes in African Pentecostalism' (2008) 7(3) *Die Erde* 252

social critique and reform by positioning women at the centre of both spiritual and civic engagement. In this way, it serves not only as a religious movement but also as a vehicle for renegotiating power dynamics and promoting gender justice in Nigeria.⁹⁴

6. Conclusion

The main goal of this study was to investigate if Pentecostal ideology and gender equality could be reconciled in the Nigerian setting. In order to address the problems caused by patriarchal systems in both the religious and social spheres, it aimed to critically analyze how Christian teachings especially those found in the Pentecostal tradition can be understood in a way that promotes gender justice. The study's goals were to identify the main theological stances within Pentecostalism that either promote or impede gender equality, examine how Nigerian laws and religious doctrine interact, and suggest reform strategies to guarantee that Pentecostalism advances a more just society for women.

Findings

The study discovered that although Pentecostalism frequently upholds conventional gender roles, the movement does have important theological and doctrinal opportunities to advance gender equality. Gender justice is based on Pentecostalism's belief in the equal worth of all believers and its emphasis on the egalitarian activity of the Holy Spirit. However, among Pentecostal groups, the full fulfillment of women's rights is still constrained by patriarchal and cultural interpretations of scripture.

One of the main conclusions was that while Pentecostal organizations, especially those in Nigeria, have shown considerable adaptability in embracing gender-sensitive practices like women actively serving in church leadership, these shifts are frequently restricted to small groups or congregations. Women's rights can be supported by Pentecostal theology, but doing so calls both a reconsideration of conventional biblical readings and a closer study of feminist theology. The conflict between religious beliefs and Nigeria's legal system, which upholds gender equality, was another significant discovery. Legal measures that go against patriarchal customs are still met with resistance within many Pentecostal groups. In order to guarantee that women's rights are respected in the church and in national legislation, this emphasizes the necessity of increased cooperation between religious leaders and legislators.

7.0 Recommendations

Based on the findings, this study offers several important recommendations for moving forward:

- i. Theological Rethinking: To advance gender equality, Pentecostal theologians and church leaders must undertake a careful and comprehensive reexamination of scripture and theology. This entails adopting feminist theological viewpoints that highlight the equal value and agency of women as well as reexamining conventional readings of important biblical passages, especially

⁹⁴Adriaan van Klinken, 'Pentecostalism, Politics and Gender: A Comparative Perspective on Zambia and Nigeria' (2011) 25(3) *Religion in Africa* 345

those that have been used to defend the oppression of women. By emphasizing reinterpretation, churches may bring their teachings into line with the core Christian message of justice and equality.

ii. Pentecostal churches should actively promote and encourage women in leadership positions by implementing gender-sensitive leadership practices. Equal access to leadership roles and decision-making in the church is crucial for women. Women may be enabled to lead in all facets of church life by implementing policies that stress gender sensitivity and diversity, mentorship programs, and leadership development.

iii. Cooperation between the Religious and Legal Sectors: To ensure that religious doctrine is in line with national legislation that support gender equality, religious leaders especially those in Pentecostal communities must work with legislators. In order to ensure that women's rights are upheld in both religious settings and society at large, this collaboration is essential in bridging the gap between religion and legal rights. Together, the two fields may forge a more solid basis for gender justice that honors both secular and religious principles.

iv. Education and Advocacy: More education and advocacy about gender justice, human rights, and the significance of women's empowerment are desperately needed in Pentecostal communities. Providing clergy and churchgoers with theological training, conferences, and seminars helps promote a more gender-sensitive and inclusive approach to Christianity. Promoting gender equality inside the church will aid in changing beliefs and encouraging behaviors that uphold women's rights within the church and in society at large.

ARTIFICIAL INTELLIGENCE IN LEGAL PRACTICE: THREAT OR TOOL FOR THE FUTURE LAWYER IN NIGERIA?

Abiodun Amuda-Kannike SAN*

Florence Nemi-Clover, Esq **

Samuel Oguiche***

Gloria Oluchi Jude-Akaraonye****

Abstract

Artificial Intelligence (AI) is rapidly transforming industries worldwide, and the legal profession is no exception. From predictive analytics in litigation to contract automation and document review, AI is redefining how legal services are delivered. However, this technological evolution has provoked significant debate, particularly in developing countries like Nigeria, where infrastructure, regulation, and legal education are still evolving. This paper interrogates whether AI is a threat or a tool for the future Nigerian lawyer. It examines the global and local impact of AI in legal practice, explores its benefits and risks, and critically evaluates the preparedness of the Nigerian legal system for such disruption. While AI holds immense potential to enhance efficiency and access to justice, it also poses challenges regarding ethical compliance, job displacement, data protection, and professional identity. Through a socio-legal analysis, the paper argues that AI, if properly harnessed, is more of a tool than a threat offering Nigerian lawyers an opportunity to modernize legal practice. The paper concludes with policy and practical recommendations for integrating AI ethically and effectively into Nigeria's legal sector.

Keywords: *Artificial Intelligence, Legal Practice, Nigeria, Future Lawyer, Legal Technology, Legal Ethics, Legal Automation, Access to Justice*

1.1 Introduction

Artificial Intelligence (AI) is no longer a concept confined to science fiction or futuristic

* PhD, Professor and Ag. Director, Department of Legislative Support Services (DLSS), National Institute for Legislative & Democratic Studies, NILDS Abuja, and Pioneer Dean, Faculty of Law, Kwara State University, Malete, via Ilorin, Kwara State. Tel: 0803 325 6756 Email: amudakannikeabiodun@gmail.com; abiodun.kannike@kwasu.edu.ng. Fellow of the Nigerian Institute of Chartered Arbitrators (NICARB); the Chartered Institute of Economics; and the Chartered Institute of Arts, Management Professionals; and an associate Member of the Chartered Institute of Taxation of Nigeria.

** Partner, Nemi & Nemi Barristers and Solicitors, 1 Sir L.O. Nemi Street, Abuloma, Port-Harcourt, Rivers State, Nigeria. Tel: (+234) 805 513 8592; Email: florenceclover@yahoo.co.uk

*** PhD, Senior Research Fellow, National Institute for Legislative & Democratic Studies, NILDS Abuja. Tel: +234 8036236419. Email: oguchesamlaw@yahoo.com

****LL.B, Hons. Legal Researcher and Analyst. Tel: +234 706 251 7974, +234 912 2523 256; Email: judegloriao@gmail.com

speculation; it is now embedded in everyday technologies and increasingly shaping the way we live, work, and interact. In the legal field, AI is gradually revolutionizing the delivery of legal services streamlining legal research, automating document review, predicting case outcomes, and even drafting contracts. This shift has sparked a critical debate across jurisdictions: will AI complement legal practice or displace traditional lawyers altogether?

Globally, law firms and courts are adopting AI tools to improve efficiency, reduce cost, and enhance access to justice. AI-powered platforms like ROSS Intelligence, which was built on IBM's Watson, have enabled lawyers to conduct legal research using natural language queries.⁹⁵ In the United Kingdom, tools like CaseText and Lexis+ AI are reshaping legal analytics and client advisory services.⁹⁶ Meanwhile, courts in countries like the United States and China have piloted AI systems for case triaging, sentencing recommendations, and digital case management.⁹⁷ These developments indicate that AI is no longer a theoretical possibility it is a present and evolving reality. In Nigeria, however, the integration of AI in legal practice remains minimal. While some innovative law firms like Omaplex Law Firm, SPA Ajibade & Co, and Giwa-Osagie & Co are embracing technology in case management and virtual court appearances, AI-driven systems are yet to become mainstream tools of advocacy or legal research.⁹⁸ Concerns range from technological illiteracy, infrastructural limitations, regulatory gaps, to ethical dilemmas. These realities place Nigerian lawyers at a crossroads: to evolve with AI or risk being left behind. Through a critical analysis, this study presents a balanced perspective, drawing on comparative insights from jurisdictions such as the United States and the United Kingdom, while anchoring the argument within Nigeria's legal context. This paper critically explores whether AI represents a threat to or a tool for the future lawyer in Nigeria. It examines global trends in AI adoption in the legal sector and reflects on Nigeria's current readiness to embrace these innovations. Drawing from doctrinal, socio-legal, and comparative perspectives, the paper aims to: first, understand the potentials and pitfalls of AI for legal professionals. Second, examine the legal and ethical implications of AI use in Nigeria's legal system, and last, recommend a policy framework for AI integration that promotes both innovation and professionalism.

2.1 Conceptual Clarification and Theoretical Framework

To properly assess the implications of Artificial Intelligence (AI) in legal practice, it is necessary to define and clarify key terms and explore the theoretical perspectives that underpin the discourse

⁹⁵ ROSS Intelligence, 'Legal Research Powered by AI' (ROSS Intelligence, 2020) [<https://rossintelligence.com>]; (<https://rossintelligence.com>) accessed 6 July 2025.

⁹⁶ LexisNexis, 'Lexis+ AI: A New Era in Legal Research' (LexisNexis UK, 2023) [<https://www.lexisnexis.co.uk/latest-news/lexis-plus-ai>] (<https://www.lexisnexis.co.uk/latest-news/lexis-plus-ai>) accessed on the 6th of July 2025.

⁹⁷ Michael Guihot, Anne Matthew and Nicolas Suzor, 'Artificial Intelligence and the Rule of Law: The Need for Regulation' (2017) 44(4) *Monash University Law Review* 103, 106–110.

⁹⁸ Oyetola Muiyiwat Atoyebi SAN, 'AI and the Future of Legal Practice in Nigeria' (2022) *The Gravitas Review of Business and Property Law* [<https://gravitasreview.com/ai-and-the-future-of-legal-practice-in-nigeria/>] (<https://gravitasreview.com/ai-and-the-future-of-legal-practice-in-nigeria/>) accessed on the 6th of July 2025.

on law and technology. This section sets the foundation for understanding the nature, scope, and significance of AI as it relates to legal systems, particularly within the Nigerian context.

2.2 What Is Artificial Intelligence?

Artificial Intelligence refers to the simulation of human intelligence in machines that are programmed to think, learn, and make decisions. According to the European Commission, AI encompasses systems that can “perceive their environment and take actions autonomously or semi-autonomously to achieve specific goals.”⁹⁹ AI systems operate through various technologies including machine learning (ML), natural language processing (NLP), neural networks, and deep learning.

2.2.1 Key Legal AI Terminologies

- LegalTech: Technology used to provide legal services and support legal work.¹⁰⁰
- Machine Learning: A subset of AI where systems improve through data exposure without being explicitly programmed.¹⁰¹
- Natural Language Processing: AI's ability to understand and interpret human language.¹⁰²

Legal AI specifically refers to software applications that perform tasks traditionally carried out by lawyers such as legal research, contract analysis, discovery in litigation, case prediction, and document drafting.¹⁰³ These tools often rely on big data, algorithms, and language processing to analyze legal texts and generate insights with greater speed and precision than humans.

2.3 Types of AI in Legal Practice

AI in law is not monolithic, not rigid. It spans a range of functionalities, including:

- i. Predictive Analytics: Used to forecast litigation outcomes based on historical data (e.g., Lex Machina).
- ii. Document Automation: AI-powered tools like DoNotPay can generate legal documents or even challenge traffic tickets.¹⁰⁴

⁹⁹ European Commission, ‘What Is Artificial Intelligence?’ (2021) [<https://digital-strategy.ec.europa.eu/en/policies/artificial-intelligence>] accessed through the internet on the 6th of July 2025.

¹⁰⁰ Andrew Arruda, ‘What is LegalTech?’ (Ross Intelligence, 2021) <https://www.rossintelligence.com/blog/what-is-legaltech>; accessed 5th July, 2025.

¹⁰¹ Tom Mitchell, *Machine Learning* (McGraw-Hill 1997).

¹⁰² Daniel Jurafsky and James H Martin, *Speech and Language Processing* (3rd edn, Prentice Hall 2021).

¹⁰³ Kevin D. Ashley, *Artificial Intelligence and Legal Analytics: New Tools for Law Practice in the Digital Age* (Cambridge University Press 2017) 23.

¹⁰⁴ DoNotPay, ‘The World’s First Robot Lawyer’ <https://donotpay.com> accessed on the 7th of July 2025.

- iii. Legal Research: Natural language AI platforms like ROSS Intelligence and Lexis+ AI assist in finding relevant case law quickly.
- iv. Chatbots & Virtual Legal Assistants: Used for client intake, triage, and FAQs in law firms.¹⁰⁵

2.4 Key Related Concepts

- Legal Technology (LegalTech): encompasses all technology used to support legal services, including case management, billing, and e-filing, not just AI.
- Algorithmic Justice refers to decision-making by machines in legal contexts, raising concerns about transparency and accountability.
- Legal Disruption: a term used to describe how emerging technologies challenge traditional legal processes and business models¹⁰⁶.

2.5 Theoretical Frameworks

To analyze the relationship between AI and the legal profession, several theoretical lenses may be employed:

1. Technological Determinism: This theory suggests that technological innovations drive social and institutional change, often beyond human control. Applied here, it implies that AI will inevitably reshape the legal profession whether lawyers are prepared or not.¹⁰⁷
2. Socio-Legal Theory: This perspective examines law as a social institution that interacts with broader societal forces including technology. It argues that law is not immune to technological influences, and any innovation must be viewed in terms of its socio-cultural, political, and economic effects.¹⁰⁸
3. Regulatory Theory: This theory concerns how emerging technologies can be regulated to balance innovation and accountability. It emphasizes the need for proactive legal frameworks to manage AI's risks in a way that protects public interest.¹⁰⁹

¹⁰⁵ American Bar Association, '2023 Legal Technology Survey Report' (ABA, 2023) [<https://www.americanbar.org/groups/law/practice/publications/techreport/2023/>] accessed on the 6th of July 2025.

¹⁰⁶ Susskind, Richard, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford University Press 2010) 88–95.

¹⁰⁷ Langdon Winner, 'Do Artifacts Have Politics?' (1980) 109 *Daedalus* 121.

¹⁰⁸ Roger Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Ashgate 2006).

¹⁰⁹ Karen Yeung, Andrew Howes and Ganna Pogrebna, 'AI Governance by Human Rights–Centred Design, Deliberation and Oversight: An End to Ethics Washing' in Markus D. Dubber, Frank Pasquale and Sunit Das (eds), *The Oxford Handbook of AI Ethics* (Oxford University Press 2020).

3.1 The Integration of AI in Global Legal Practice

Artificial Intelligence has rapidly evolved from a niche technological concept into a functional tool used across various legal systems worldwide. From litigation prediction to intelligent contract analysis, countries with advanced legal infrastructures have embraced AI to enhance access to justice, improve legal research, reduce costs, and increase efficiency in both litigation and transactional work. This article provides a comparative analysis of how AI has been integrated into legal practice in selected jurisdictions namely, the United States, the United Kingdom, Canada, and China highlighting models that Nigeria can draw lessons from.

A. United States:

The United States is a leading jurisdiction in the deployment of AI within legal systems. Law firms and courts extensively use AI-based platforms such as Lex Machina, ROSS Intelligence (before it was shut down in 2021 due to a lawsuit), and Casetext's CoCounsel. These tools help in predicting case outcomes, legal research, and document review. For example, Lex Machina, a litigation analytics platform, enables lawyers to assess how a judge has ruled in similar cases, helping to develop effective case strategies.¹¹⁰

American courts have also experimented with risk assessment algorithms, such as COMPAS (Correctional Offender Management Profiling for Alternative Sanctions), which assists in bail and sentencing decisions though not without controversy, due to issues of algorithmic bias and transparency.¹¹¹ Legal education in the U.S. is adapting as well. Law schools such as Stanford, Harvard, and Georgetown now offer courses on Law and Artificial Intelligence, showing an institutional commitment to preparing future lawyers for a tech-driven profession.¹¹²

B. United Kingdom

In the UK, technology is increasingly being embraced in legal practice, particularly in commercial and corporate legal services. Tools like Lexis+ AI, Luminance, and RAVN Systems are used to automate contract review, due diligence, and compliance analysis.¹¹³ The Solicitors Regulation

¹¹⁰ ex Machina, 'Legal Analytics' [<https://lexmachina.com>] (<https://lexmachina.com>) accessed through the internet on the 8th of July 2025.

¹¹¹ Julia Angwin et al, 'Machine Bias: There's Software Used Across the Country to Predict Future Criminals. And It's Biased Against Blacks' (ProPublica, 2016) [<https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>] (<https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>) accessed through the internet on the 8th of July 2025.

¹¹² Stanford Law School, 'Law and Policy Lab: AI and the Law' [<https://law.stanford.edu/policy-lab/ai-and-law/>] (<https://law.stanford.edu/policy-lab/ai-and-law/>) accessed on the 8th of July 2025.

¹¹³ Luminance, 'Legal Document Review Powered by AI' [<https://www.luminance.com>] accessed on the 13th of July, 2025.

Authority (SRA) and the Law Society of England and Wales have both published guidance on the ethical use of AI, stressing principles like transparency, accountability, and non-discrimination.¹¹⁴ The UK Supreme Court and Court of Appeal have also transitioned into digitized case filing and management systems, creating a foundation for future AI integration into judicial processes.

C. Canada

Canada has embraced AI notably through its judiciary. In Ontario, the Superior Court of Justice has tested AI tools for document review and case scheduling. The Canadian Judicial Council is actively researching the ethical implications of AI in the courtroom. Meanwhile, law firms such as Osler, Hoskin & Harcourt LLP and Blake, Cassels & Graydon LLP have integrated AI into litigation support and M&A review.¹¹⁵ The Canadian Bar Association released a report titled “AI and the Legal Profession”, encouraging proactive regulation and capacity-building for Canadian lawyers.¹¹⁶

D. China:

China leads in the integration of AI within its court system. The Hangzhou Internet Court and Beijing Internet Court use AI judges and blockchain evidence systems for online dispute resolution, particularly in IP and e-commerce-related cases. In some instances, chatbots known as “robot judges” can handle basic judicial tasks, including issuing rulings on small claims without human intervention.¹¹⁷ The Chinese government's Artificial Intelligence Development Plan actively promotes AI across sectors, including the legal system. However, concerns persist regarding lack of judicial independence and state surveillance embedded within AI tools.¹¹⁸

E. Singapore

Singapore has been globally recognized for its strategic approach to legal technology integration. Through its Legal Technology Vision, the country launched initiatives like “FLIP” (Future Law Innovation Programme) to foster legal innovation among firms and start-ups.¹¹⁹ The Singapore Academy of Law has supported AI-driven platforms like Intellllex, a legal research tool using machine learning to improve search relevance and classification¹²⁰. The judiciary also piloted the use of AI in sentencing for traffic offences, ensuring consistency and reducing judicial

¹¹⁴ Law Society of England and Wales, ‘Technology and Law: A Framework for Ethics’ (2022) [<https://www.lawsociety.org.uk/topics/research/technology-and-law-a-framework-for-ethics>] accessed on the 13th of July, 2025.

¹¹⁵ Osler, Hoskin & Harcourt LLP, ‘Legal Technology & Innovation’ [<https://www.osler.com/en/services/innovative-services>] accessed on the 13th of July, 2025.

¹¹⁶ <https://www.cba.org/resources/practice-tools/ethics-of-artificial-intelligence-for-the-legal-practitioner/3-guidelines-relating-to-use/>; accessed on the 14th of July, 2025.

¹¹⁷ <https://iacajournal.org/articles/10.36745/ijca.367>, accessed on the 13th of July, 2025.

¹¹⁸ Graham Webster, ‘China’s AI Development Plan’ (New America, 2017) [<https://www.newamerica.org/cyber-security-initiative/digichina/blog/full-translation-chinas-new-generation-artificial-intelligence-development-plan-2017/>] accessed on the 13th of July, 2025.

¹¹⁹ Singapore Ministry of Law, Legal Technology Vision (2018).

¹²⁰ Intellllex, Smart Legal Research Platform <https://www.intellllex.com.>, accessed on the 17th day of July, 2025.

workload.¹²¹ Furthermore, Singapore's Ministry of Law supports regulatory sandboxes that allow legal tech start-ups to test AI tools in a controlled environment. This balance of innovation and oversight has made Singapore a leader in AI legal integration in Southeast Asia¹²².

F. South Africa

As one of Africa's leading legal systems, South Africa is gradually embracing AI in its legal practice. Law firms are starting to adopt contract review AI tools like Luminance and Kira Systems to streamline due diligence and document analysis.¹²³ These tools reduce turnaround times and increase efficiency, particularly in corporate law. Universities and think tanks in South Africa are also driving academic research into the legal and ethical dimensions of AI. The University of Pretoria's Centre for AI and Digital Policy is notable for contributing African perspectives on legal AI governance.¹²⁴ However, broader AI adoption in South Africa faces infrastructural and policy challenges, including limited access to digitized legal data and concerns over fairness in automated systems.¹²⁵ Despite these barriers, South Africa's progressive constitutional culture provides a strong foundation for responsible AI development in law.

Across these jurisdictions, the integration of AI into legal practice has demonstrated significant benefits, ranging from predictive analytics to smart justice delivery. Each country's approach reflects its technological maturity, regulatory framework, and commitment to innovation or oversight. For Nigeria, the diversity in these models offers a valuable comparative framework for AI adoption that aligns with local realities while aiming for global best practices.

G. Lessons for Nigeria

These jurisdictions demonstrate varying levels of AI integration driven by supportive policy environments, significant investment in legal technology, and a clear regulatory approach. Nigeria can draw key lessons from these global experiences:

- I. Encourage legal education reform, introducing AI law courses in Nigerian law faculties.
- II. Develop ethical guidelines on AI use in practice and court systems, inspired by the SRA and Canadian Bar models.
- III. Invest in pilot AI projects within high-volume courts (commercial or family courts), to reduce case backlogs and test technological efficacy.

¹²¹ Supreme Court of Singapore, Pilot Sentencing Tool Project, 2020.

¹²² LawTech.Asia, 'Singapore's Legal Tech Regulatory Sandbox' (2022).

¹²³ Kira Systems, 'Client Case Studies in South Africa', 2021.

¹²⁴ Centre for AI and Digital Policy, University of Pretoria.

¹²⁵ J. Louw, 'AI Ethics and Access to Justice in South Africa' (2023) 38 SAJHR 84.

4.1 The Rise of AI in Nigerian Legal Practice

While the global legal community has seen a significant shift towards the integration of Artificial Intelligence (AI) into law, Nigeria has only just begun to explore its potential. Though having recently come into existence, there are indicators that the Nigerian legal ecosystem is slowly adopting AI-driven tools in both litigation and corporate practice.

4.2 AI in the Nigerian Judiciary

Nigeria's judiciary has experimented with technology-driven reforms, particularly through the implementation of electronic filing systems and virtual court sittings, a development hastened by the COVID-19 pandemic¹²⁶. Some state judiciaries, notably Lagos and Rivers, have implemented e-judiciary platforms, but these platforms do not yet integrate advanced AI functionalities such as predictive analytics or AI-based judgment analysis. Nonetheless, the move toward digitization lays the groundwork for future AI integration.

4.3 AI Tools in Law Firms

A few forward-thinking Nigerian law firms are beginning to utilize AI-enabled legal research platforms like LawPavilion, Primsol, and Legalpedia. These tools provide judgment search, citation tracking, and statutory analysis features. While they are not AI in the strictest sense, recent upgrades increasingly incorporate machine learning features, such as automated case summarization and citation suggestions.

4.4 Legal Education and AI Awareness

Legal education in Nigeria has yet to embrace AI in its curriculum. The Nigerian Law School and many university law faculties do not offer courses in legal technology or artificial intelligence, creating a knowledge gap among future lawyers. However, private institutions and legal tech hubs (Innovation Law Club Africa and the Nigerian Bar Association's Section on Business Law) have begun offering workshops and webinars introducing practitioners to AI in law.

4.5 Challenges Facing AI Adoption in Nigeria

Despite pockets of progress, several obstacles remain. These include low digital literacy among legal practitioners, poor internet infrastructure, limited funding for legal tech startups, and the absence of a national legal technology policy. Moreover, there is no clear regulatory guidance on the ethical use of AI in legal practice, leaving many practitioners unsure of how far they can rely on such tools.

4.6 EMERGING OPPORTUNITIES

¹²⁶ <https://www.lawjournal.digital/jour/article/view/547>; accessed on the 14th of July, 2025.

With the increasing volume of litigation, delays in judicial process, and growing demand for efficiency, AI presents a valuable opportunity for Nigerian legal stakeholders. If appropriately harnessed, it can support faster document review, streamline case preparation, and improve access to justice, especially in underserved regions. However, the adoption of legal technology remains low compared to global standards due to limited digital infrastructure, poor funding of judiciary systems, lawyer skepticism and fear of job displacement, and lack of a clear regulatory framework guiding AI use in law.¹²⁷

4.7 Threats Posed By AI to Nigerian Lawyers

While artificial intelligence offers notable promise, it also introduces a range of profound challenges to the Nigerian legal profession. Many practitioners perceive AI as a disruptive force that threatens both the traditional structure of legal services and the human element of justice.

1. Job Displacement and De-skilling

One of the most widely discussed fears is that AI could replace junior lawyers and paralegals. As AI-powered platforms like ROSS Intelligence and Lexis+ AI become more capable of handling tasks like legal research and contract review, the entry-level functions once performed by young lawyers are being automated. In Nigeria, where thousands of law graduates are churned out yearly, this poses a growing employment threat.¹²⁸ Furthermore, AI may de-skill lawyers, especially where firms over-rely on technology for analytical tasks. In countries like the UK and US, junior lawyers are already being redeployed to non-traditional legal tech roles, signaling a shift in how legal skills are valued.¹²⁹

2. Erosion of Human Judgment and Advocacy

AI lacks moral reasoning, empathy, and discretion qualities central to legal advocacy and dispute resolution.¹³⁰ While AI can process large volumes of case law or suggest outcomes based on precedent, it cannot weigh human motivations or deliver persuasive argumentation in court. In Nigeria, where customary law and discretion often play significant roles, this is a fundamental limitation.

3. Ethical and Regulatory Dilemmas

AI in law raises complex ethical issues. For example, can a lawyer rely on an AI-generated opinion that turns out to be wrong? If yes, who bears responsibility? The lawyer? The developer? This question of legal liability remains unanswered in most jurisdictions, including Nigeria.¹³¹

¹²⁷ LegalTech Adoption in Africa: Nigeria's Journey' Legal Business Africa (2022) <https://legalbusinessafrica.com>; accessed on the 10th of July, 2025.

¹²⁸ <https://caseradar.ai/news/68708caca556d17deff68f2c>, accessed on the 14th of July, 2025.

¹²⁹ Susskind R, *Tomorrow's Lawyers: An Introduction to Your Future*. (2nd edn, Oxford University Press 2017).

¹³⁰ Casey A and Niblett A, 'The Death of Rules and Standards' (2020) 92 *NYU Law Review* 1.

¹³¹ Eze C, 'Legal Liability for AI Errors in Legal Practice' (2023) 5(2) *Nigerian Journal of Tech and Law* 22–37.

Moreover, the Nigerian Rules of Professional Conduct (RPC) do not yet account for AI-generated legal work. For instance, Rule 14(1) emphasizes that a lawyer must act competently, yet it is unclear how this standard applies when AI is used in delivering such services.¹³²

4. Privacy and Data Security Risks

AI systems often require access to large volumes of data to function effectively. In Nigeria, where data protection laws are still maturing, this raises concerns over the unauthorized processing of sensitive legal information. Although the Nigeria Data Protection Act (NDPA) 2023 provides a framework, its enforcement remains weak¹³³. Legaltech platforms that rely on cloud storage or offshore servers may inadvertently expose client information to foreign surveillance or cyberattacks¹³⁴.

5. Widening the Justice Gap

AI tools are expensive to build and maintain, which means that well-funded law firms or elite institutions are more likely to benefit from them. This may further widen the access-to-justice gap in Nigeria, where rural communities and underfunded legal aid systems already face barriers¹³⁵.

5.1 AI AS A TOOL FOR ENHANCING LEGAL PRACTICE

Despite the concerns AI presents, it actually offers enormous opportunities to transform the Nigerian legal profession. From enhancing efficiency to expanding access to justice, AI has the potential to revolutionize how legal services are delivered.

5.1.1 ENHANCING LEGAL RESEARCH AND DRAFTING

AI tools like LawPavilion, LexisNexis, and Westlaw have revolutionised legal research by making it faster, more comprehensive, and precise. Nigerian platforms such as LawPavilion and Primsol now integrate machine learning features that help lawyers identify relevant precedents, statutes, and even generate automatic case summaries¹³⁶. These tools help lawyers reduce hours of manual research and minimize human error. Contract review software like, Kira Systems and Legal Robot, commonly used in Europe and the United States automatically flag inconsistent clauses, missing terms, or high-risk language.¹³⁷ Though these are not yet widely adopted in Nigeria, global trends suggest they will become increasingly relevant, especially for corporate legal practice.

¹³² Rules of Professional Conduct for Legal Practitioners, 2007, Rule 14(1).

¹³³ Nigeria Data Protection Act, 2023.

¹³⁴ Olatunji O, 'Cloud Computing and the Protection of Legal Data in Nigeria' (2022) *Nigerian Bar Journal* 18(3) 45–62.

¹³⁵ Okonkwo J, 'Legal Technology and Access to Justice in Nigeria' (2021) *African Journal of Law and ICT* 4(1) 66–78.

¹³⁶ LawPavilion, AI Features for Nigerian Lawyers (2024) [<https://lawpavilion.com>] accessed on the 15th of July, 2025.

¹³⁷ Surden H, 'Machine Learning and Law' (2014) 89 *Washington Law Review* 87–115.

5.1.2 Predictive Analytics and Case Outcome Forecasting

AI also provides tools for predictive legal analytics, enabling lawyers to anticipate case outcomes based on historical data. In the U.S., platforms like Lex Machina use AI to analyze court records and reveal patterns in judicial behaviour¹³⁸. If similar platforms were developed in Nigeria, lawyers could use them to assess litigation risks, make more informed decisions about settlements, or select favourable jurisdictions.

5.1.3 Automating Routine Legal Tasks

AI is particularly powerful in automating repetitive legal functions such as compliance checks, client onboarding, billing, and due diligence¹³⁹. This automation reduces operational costs and allows legal professionals to redirect their energy towards more strategic tasks. Document automation tools can generate standardised contracts or court forms in minutes—a major efficiency boost for busy practitioners.

5.1.4 Enhancing Access to Justice

AI holds enormous promise in extending legal services to underserved populations. In the U.S., the AI-powered chatbot DoNotPay offers free legal assistance on issues like parking tickets, landlord disputes, and subscription cancellations¹⁴⁰. If adapted in Nigeria—possibly through platforms that support Pidgin English or local dialects—AI could democratise legal information, helping citizens who cannot afford traditional legal services.

5.1.5 Supporting Judicial Reforms

Nigeria's judiciary continues to struggle with case backlogs and procedural delays. AI could assist courts with case scheduling, backlog tracking, and generating data for policy reform¹⁴¹. For instance, algorithmic tools can be deployed to sort cases by urgency or category, improving time management in courts, particularly in high - volume states like Lagos and Rivers.

5.1.6 Increasing Professional Competence

By automating routine tasks, AI allows lawyers to focus more on creative problem-solving, negotiation, and client advocacy. This repositioning shifts AI from a perceived threat to a

¹³⁸ Lex Machina, Legal Analytics Platform <https://lexmachina.com>, accessed t on the 15th of July, 2025.

¹³⁹ Remus D and Levy F, 'Can Robots Be Lawyers?' (2016) 30 *Georgetown Journal of Legal Ethics* 501.

¹⁴⁰ DoNotPay, The World's First Robot Lawyer <https://donotpay.com>

¹⁴¹ Chukwuemeka J, 'Technology and the Future of the Nigerian Judiciary' (2022) *Journal of Law, Policy & Technology* 9(1) 34–49.

collaborative tool.¹⁴² Rather than replacing lawyers, AI becomes a digital partner that augments human judgment and enhances client service.

5.1.7 Cost Reduction

Automating routine legal tasks reduces overhead costs, allowing firms to offer more competitive billing models, especially for startups and SMEs.¹⁴³

6.1 Regulatory And Ethical Frameworks For AI In Law

As Artificial Intelligence (AI) continues to penetrate legal systems globally, it becomes crucial for Nigeria to adopt a regulatory and ethical framework that ensures both innovation and accountability. The current legal environment in Nigeria lacks explicit laws or ethical directives that address AI's implications in legal practice.

6.1.1 Absence of Specific AI Regulation In Nigeria

At present, Nigeria has no single piece of legislation that governs the use of AI in legal services. The Nigeria Data Protection Act 2023 offers general rules on privacy and data processing but fails to provide rules for algorithmic transparency, automated legal advice, or liability allocation for AI errors.¹⁴⁴ In addition, foundational laws such as the Legal Practitioners Act¹⁴⁵ and the Rules of Professional Conduct for Legal Practitioners¹⁴⁶ do not contemplate technology-assisted legal work. As such, ethical obligations like client consent, duty of competence, and confidentiality become vague in the context of AI use.

6.1.2 Ethical Dilemmas and Responsibility Gaps

A fundamental ethical concern is who bears liability when AI gives wrong advice, the lawyer or the software developer? Since most AI legal tools operate as black boxes, it is difficult to trace errors to human actors¹⁴⁷. Lawyers must also grapple with whether they are obligated to inform clients when AI was used in creating documents, reviewing contracts, or preparing legal opinions. Another concern is unauthorised legal practice. If an AI chatbot answers a client's legal question without human supervision, this could violate Nigeria's licensing rules and standards for professional conduct.

¹⁴² Susskind R, *Online Courts and the Future of Justice* (Oxford University Press 2019).

¹⁴³ Susan Nevelow Mart, 'The Algorithm as a Human Artifact: Implications for Legal Analytics' (2017) 109 *Law Library Journal* 387.

¹⁴⁴ Nigeria Data Protection Act 2023.

¹⁴⁵ Legal Practitioners Act, Cap L11, Laws of the Federation of Nigeria 2004.

¹⁴⁶ Rules of Professional Conduct for Legal Practitioners 2007.

¹⁴⁷ Eze C, 'Legal Liability for AI Errors in Legal Practice' (2023) *Nigerian Journal of Tech and Law* 5(2) 22–37.

6.1.3 Global Best Practices and Comparative Models

Internationally, several jurisdictions are responding to these ethical and regulatory gaps. The European Union has proposed the Artificial Intelligence Act, which classifies legal AI tools as high-risk technologies and mandates clear human oversight, risk management, and data documentation.¹⁴⁸ In the United States, the American Bar Association (ABA) issued Formal Opinion 498, stating that lawyers must remain competent in the technology they use and supervise AI tools to ensure legal accuracy¹⁴⁹. Similarly, the UK Solicitors Regulation Authority (SRA) published a report stressing that AI should support not replace legal professionals, and that the duty of care still rests with the lawyer¹⁵⁰.

D. Proposals for Nigeria

Nigeria can take the following regulatory and ethical steps to ensure the responsible use of AI in law:

1. Guidelines from the Nigerian Bar Association (NBA): The NBA should issue ethical guidelines for AI use, covering client consent, transparency, and accountability.
2. Legislative Framework: The National Assembly could propose a Legal Technology Regulation Bill defining permissible AI use, establishing licensing for AI tools, and delineating responsibilities among users, developers, and institutions.
3. Judicial Rules: Courts should adopt protocols on the admissibility and evaluation of AI-generated materials, especially where bias or data integrity is in question.
4. Mandatory Disclosure Requirements: Lawyers should be required to disclose when AI is used in preparing legal documents, particularly in contentious matters like litigation or arbitration.

7.1 Findings and Analysis

This section critically examines the central tension explored in this paper — whether artificial intelligence (AI) in legal practice is a threat or a tool for the Nigerian lawyer. Drawing from the chapters above, it is evident that the answer is not binary. Rather, AI is a dual-edged instrument, whose impact depends largely on how it is regulated, adopted, and integrated into Nigeria's legal landscape.

¹⁴⁸ European Commission, 'Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)', COM/2021/206 final.

¹⁴⁹ American Bar Association, 'Formal Opinion 498: Virtual Practice' (2021).

¹⁵⁰ Solicitors Regulation Authority (UK), 'Technology and Legal Services' Report (2021), [<https://www.sra.org.uk>] accessed 23 July 2025.

i. The Threat is real, but not absolute

AI does present legitimate threats to the traditional model of law practice in Nigeria, especially:

- a. Job redundancy for junior lawyers¹⁵¹
- b. Over-reliance on machines that lack ethical reasoning¹⁵²
- c. Gaps in liability and accountability
- d. Unchecked expansion of legal advice by non-lawyer AI systems

The concern is heightened by the Nigerian context where:

- i. Digital literacy is uneven across practitioners
- ii. Many firms still operate manually
- iii. Regulatory bodies are yet to publish any AI -specific policies

Yet, these threats are not fatal. Just as email, e-filing, and virtual court hearings once posed disruption, they are now fully integrated into Nigerian legal workflow.

ii. Nigerian Lawyers are already using AI, even if minimally

Through platforms like, LawPavilion, Primsol, and Legalpedia, Nigerian lawyers already rely on AI for case search, citation summaries, and predictive analytics¹⁵³. While these tools are not as advanced as Western platforms like Lex Machina or ROSS Intelligence, they represent early adoption and openness to innovation.

Surveys conducted by the Nigerian Bar Association Section on Business Law (NBA-SBL) in 2023 found that over 40% of commercial law firms in Lagos use some form of AI-enabled legal research tool.¹⁵⁴

iii. Tool vs. Threat: It Depends on the Lens

- From a regulatory perspective, AI is a threat unless proper frameworks are in place.
- From an economic perspective, it is a tool for growth, reducing cost and improving service delivery.

¹⁵¹ Remus D and Levy F, 'Can Robots Be Lawyers?' (2016) 30 Georgetown J. Legal Ethics 501.

¹⁵² Casey A and Niblett A, 'The Death of Rules and Standards' (2020) 92 *NYU L. Rev. 1.

¹⁵³ LawPavilion, AI in Nigerian Legal Research Tools (2024) [<https://lawpavilion.com>] accessed on the 15th of July, 2025.

¹⁵⁴ NBA-SBL, Technology and Legal Services Surveys (2023).

- From an ethical lens, it poses serious dilemmas if transparency and accountability are not prioritised.
- From the client's lens, AI is welcomed as it enables speed, affordability, and simplified legal language.¹⁵⁵

iv. Opportunities for Collaboration, Not Elimination

AI is unlikely to replace lawyers entirely. What it will replace is:

- a. Lawyers who fail to adapt and upskill
- b. Manual tasks that do not require judgment or persuasion

The future belongs to “augmented lawyers” who combine human empathy with AI-driven efficiency.¹⁵⁶ As one scholar rightly said:

“The lawyer who uses AI will replace the lawyer who does not.”¹⁵⁷

v. Missed Opportunity or Transformational Shift?

If Nigeria fails to create an enabling environment, we risk:

- a. Becoming a dumping grounds for foreign legal technology.
- b. Widening the justice gap between urban and rural communities
- c. Creating an elitist AI-powered legal class

But if embraced responsibly, AI could:

- i. Modernize the judiciary
- ii. Digitize legal education
- iii. Improve the quality and affordability of justice delivery

8.1 Summary

The global rise of Artificial Intelligence (AI) is redefining legal practice, prompting a critical evaluation of its implications particularly in Nigeria. This article explores whether AI should be seen as a threat to the legal profession or a tool for the modern lawyer. Through a comparative, socio-legal analysis, it argues that AI, though disruptive, offers transformative potential that can be harnessed responsibly to enhance legal service delivery, improve access to justice, and increase

¹⁵⁵ DoNotPay, The World's First Robot Lawyer [<https://donotpay.com>] 24 July 2025.

¹⁵⁶ Susskind R, Tomorrow's Lawyers: An Introduction to Your Future (Oxford University Press 2017).

¹⁵⁷ Ibid

the efficiency of the Nigerian legal system. At the core, the article examines the concept, nature, and types of Artificial Intelligence, distinguishing between narrow AI (which handles specific tasks like legal research or document review) and general AI (which mimics broader human reasoning). It also introduces important subsets such as machine learning, natural language processing (NLP), and expert systems technologies that already influence legal operations in other jurisdictions.

In reviewing the development and uses of AI in legal practice, the article highlights how AI-powered tools are now embedded in global legal workflows. Applications range from AI-driven legal research platforms like LexisNexis and ROSS Intelligence, to contract review tools such as Kira Systems and Luminance, and even predictive analytics software capable of forecasting litigation outcomes. These tools reduce time, cost, and error, while augmenting lawyers' capacity to deliver smarter, data-driven legal services.

A major portion of the paper investigates the global integration of AI in legal systems, with special focus on eight jurisdictions: the United States, United Kingdom, Canada, China, Singapore, South Africa, India, and the European Union. The U.S., for example, is leading in legal tech innovation, with firms adopting AI for e-discovery and case analytics. The UK emphasizes ethical AI use, with regulatory guidance from bodies like the Law Society. Canada's courts and law firms are using AI for access to justice and legal prediction, while China's "smart courts" showcase an ambitious, AI-driven justice system that raises concerns about transparency and fairness. Singapore demonstrates how strategic innovation, through regulatory sandboxes and structured legal tech adoption, can modernize judicial processes. South Africa and India, although in early stages, show promise through academic involvement and emerging legal tech applications.

When examining AI adoption in Nigeria, the article finds that despite the rising global tide, Nigeria is still lagging. Key challenges include lack of digitized legal infrastructure, low awareness, and minimal regulatory guidance. However, AI has started gaining attention among Nigerian law firms and academic institutions. Tools for legal research and client management are beginning to appear, though widespread adoption remains slow.

Crucially, the article presents a socio-legal analysis of AI's impact. It evaluates AI's advantages efficiency, accuracy, cost-effectiveness, and enhanced legal access against potential threats, such as job displacement, ethical ambiguity, algorithmic bias, and erosion of human judgment in justice delivery. It argues that the real danger lies not in AI itself, but in its unregulated or careless use. AI must serve as a complement not a replacement for human reasoning, professional discretion, and the empathetic dimensions of legal service.

The article further discusses the legal and regulatory implications, noting that Nigeria lacks specific laws on AI. Current laws like the Nigerian Data Protection Act and the Cybercrimes Act 2015 may touch on peripheral aspects but are not robust enough to govern AI's role in law. The article advocates for the urgent development of a national AI framework, ethical guidelines for AI

use in legal practice, and clear accountability standards to govern machine-assisted decision-making. Also central to the discourse is the question of whether Nigerian lawyers are prepared for the AI era. The article contends that legal education must be reformed to include digital literacy, legal informatics, and technology law. Continuous professional development (CPD) programmes should equip lawyers with the necessary skills to work alongside AI. Collaboration between the Nigerian Bar Association, law faculties, and tech developers is critical to close the skill gap.

Ultimately, the article concludes that AI is more of a tool than a threat, provided that Nigeria takes proactive steps. These include:

- a. Developing a national AI and legal tech policy.
- b. Reforming legal education and training.
- c. Strengthening the ethical framework guiding AI's use.
- d. Creating a multidisciplinary ecosystem for legal tech innovation.

Through these measures, AI can transform the legal profession into a more accessible, accountable, and technologically adaptive system, fit for the demands of the 21st century.

8.2 Recommendations

The future of artificial intelligence (AI) in Nigerian legal practice hinges not just on technology, but on the preparedness of the legal system. Based on the analysis thus far, AI should be seen as a complementary tool, not a replacement, for lawyers. However, without adequate policies and training, it can easily become a threat. Below are specific, actionable recommendations for various stakeholders:

A. Nigerian Bar Association (NBA)

- i. Publish AI Practice Guidelines: The NBA should develop ethical and procedural guidelines for AI use in legal practice, akin to the ABA's Formal Opinion 498¹⁵⁸. These guidelines should address issues such as the duty of competence, transparency with clients, and liability for AI-assisted advice.
- ii. Incorporate Legal Tech in Continuing Legal Education (CLE): Mandatory CLE courses should be expanded to include digital literacy, AI awareness, and legal innovation.

B. Legal Education Institutions

¹⁵⁸ American Bar Association, 'Formal Opinion 498: Virtual Practice' (2021).

- i. Update Law Curricula: Law faculties and the Nigerian Law School should revise their curricula to include modules on legal technology, artificial intelligence, data privacy, and emerging law-tech interfaces¹⁵⁹.
- ii. Collaborate with LegalTech Hubs: Institutions should partner with platforms such as Innovation Law Club Africa, Legal Hackers Lagos, and TechHer NG to provide practical exposure to AI tools¹⁶⁰.

C. The Judiciary

- i. Establish Judicial Technology Task Forces: Courts should form committees to assess AI's relevance in judicial work, including smart case assignment, judgment drafting assistance, and case delay analysis.
- ii. Adopt Intelligent Court Management Systems: AI can support e-filing, docket management, and intelligent scheduling to reduce case backlogs, especially in high-volume states.

D. National Assembly and Legal Regulators

- i. Enact a Legal Technology Regulation Act: The Act should define legal AI services, assign liability, and set licensing and compliance standards for legaltech products in Nigeria.
- ii. Establish a LegalTech Oversight Commission: A national commission, perhaps under the Ministry of Justice or NITDA, should regulate, monitor, and accredit AI tools in the legal industry¹⁶¹.

E. LegalTech Developers

- i. Prioritise Nigerian Context and Languages: Developers must train their models on Nigerian case law, statutes, and practices, and create multilingual bots that understand Pidgin English and indigenous languages.
- ii. Ensure Algorithm Transparency: Legal AI tools must be explainable, auditable, and free from bias especially when used in sensitive fields like criminal law or labour disputes.

F. Digital Infrastructure

- i. Government and judiciary should invest in broadband and courtroom digitization.

¹⁵⁹ Chukwuemeka J, 'Technology and the Future of the Nigerian Judiciary' (2022) *Journal of Law, Policy & Technology* 9(1) 34–49.

¹⁶⁰ Innovation Law Club Africa, 'LegalTech Training Series' (2023) <https://innovationlawclubafrica.com>

¹⁶¹ National Information Technology Development Agency (NITDA), 'National AI Policy Draft' (2023).

G. Public Awareness

- i. Promote legal technology literacy among citizens to bridge access to justice.

H. Capacity Building

- i. CPD programmes on AI use should be made compulsory for practising lawyers.

8.3 Conclusion

Artificial Intelligence (AI) is not merely a futuristic concept, it is already reshaping legal systems across the world. As demonstrated throughout this paper, AI carries both promise and peril for the Nigerian legal profession. On one hand, it threatens to disrupt conventional legal roles, challenge established ethics, and expose gaps in regulatory oversight. On the other hand, if responsibly integrated, it can revolutionise legal service delivery, enhance judicial efficiency, and democratise access to justice. The key insight emerging from this analysis is that AI is a tool, not a replacement. The Nigerian lawyer of the future will not be defined solely by knowledge of statutes and case law, but also by their ability to collaborate with machines, leverage data, and deliver more accurate and efficient services to clients. This calls for retooling the legal curriculum, upskilling practitioners, and creating enforceable ethical standards.

Nigeria cannot afford to remain passive. The rapid global developments in legal technology demand that local actors, from the Bar and the Bench to lawmakers and developers, act decisively. The future Nigerian lawyer must embrace technology, not resist it. This paper has demonstrated that AI, if approached with vision, regulation, and ethical responsibility, is not a threat but a transformational tool. The call is for Nigerian legal stakeholders to rise to the challenge and not be left behind in the unfolding digital legal revolution. The future belongs not to those who resist innovation, but to those who master it wisely and use it ethically.

THE OFFENCE OF BIGAMY IN NIGERIA: A PAPER TIGER?

Josephine Adejoke Adebayo*

Oluwaniyi Simeon Akinwale**

Toluwalase Toyosi Ajibade***

Olamiposi Sarah Kushimo****

Abstract

Marriage is a social and legal relationship which the law protects in order to preserve its sanctity and marital bond. Nigeria is characterized by ethnic, cultural and religious diversity. It is equally a patriarchal society, therefore, bigamy is not generally seen as a profound violation of the marriage institution. Because of these difference, persons have the choice of selecting the type of marriage suitable to their way of life. There are numerous legal frameworks governing bigamy in Nigeria such as statutory provisions and case laws. However, the enforcement mechanism is weak thereby resulting to the persistence in the commission of the offence. The recent decision of court in Mohammed v Mohammed has further added to the confusion as to whether the offence still exist under the Nigerian laws. This paper uses both primary and secondary sources of doctrinal legal research comprising of statutory provisions, case laws, law textbooks, journals, articles and other online materials to analyse information set out. It finds that the rate at which the offence is committed in Nigeria has greatly increased as a result of weak enforcement mechanism. It concludes that commission of bigamy persist in Nigeria due to socio-religious differences and inefficiency of extant laws. It recommends strict application of punishment to the offence, legislative reforms and societal orientation.

Keywords: bigamy, laws, marriage, monogamous, polygamous

1.0 Introduction

Across the globe, marriage is acknowledged and referred as a universal institution. The sanctity of marriage is a universally acknowledged concept since it is a social institution that is founded on and regulated by cultural and religious norms.¹⁶² Marriage is a dedicated union between a man and woman in which they become husband and wife. Consequently, it is a commitment. Marriage

* LL.B, BL, LL.M, PhD Candidate, Lecturer, School of Law and Security Studies, Babcock University; adebayoj@babcock.edu.ng; +2348073862121.

** LL.B, ACI Arb, Babcock University Law graduate; simeonoluwaniyi@gmail.com; +234 816 3718321.

*** LL.B, BL, LL.M, PhD, Lecturer, School of Law and Security Studies, Babcock University; ajibadet@babcock.edu.ng; +2347034401290.

**** LL.B, Babcock University Law graduate; olamiposikushimor5@gmail.com; +2348107760768.

¹⁶² Nwogugu E.I, *Family Law in Nigeria*. (3rd edn, HEBN Publishers 2014) 4.

is seen as a contract between two individuals, because marriage imposes special rights and obligations on each contracting party and fundamentally alters their respective statuses, it is given particular legal and social significance. Prior to colonialism in Nigeria, polygamy was widely practiced by various ethnic groups, it was normal for a man to have more than a wife. Colonialism brought about the introduction of monogamy into the Nigerian marriage systems; this gives intending couples the right to select the type of marriage of their choice because they all have different legal implications.¹⁶³ Despite this, Nigerians have over the years been combining both monogamous and polygamous styles of marriage such as double-decker marriage because of lack of proper orientation.¹⁶⁴ However, not every party is keeping up to the mandates of monogamous style of marriage because some persons want to have more spouses which is leading to some socio-legal issues.

The Marriage Act 1914 provides for statutory marriage in Nigeria and it is monogamous, while Customary marriage laws and Islamic marriage laws regulate polygamy. Monogamous marriage is an agreement between one man and one woman to remain together voluntarily for the rest of their lives.¹⁶⁵ It entails parties' commitment to each other in marriage, to the exclusion of others until death or divorce separates them. This system of marriage only permits one spouse at a given time. A polygamous marriage is a marriage to more than one partner, simultaneously.¹⁶⁶ There are three forms of polygamy which are polygyny, marriage of one man to more than one woman at the same time; polyandry, marriage of one woman to more than one man at the same time; and polygynandry, it is the marriage of multitude i.e., multiple men married to multiple women in order to constitute a large family unit.¹⁶⁷ It is important to note that in countries like Nigeria, polygyny is the only recognized form of polygamy. In the case of *Kpelanya v Tsoka and Anor*,¹⁶⁸ it was held that a woman cannot be lawfully married to several men simultaneously. Thus, in this paper, polygyny will be solely regarded as polygamy. Therefore, polygamous marriages in Nigeria may be defined as a union of a man with one or more women, simultaneously. In this type

¹⁶³. Nkume Kate 'The Legal Rights of Spouses in Marriage under Nigerian Law' (*LawPavilion*, June 19, 2023) <<https://lawpavilion.com/blog/the-legal-rights-of-spouses-in-marriage-under-nigerian-law/>> accessed 8 June 2025

¹⁶⁴. Ajuzie C. Osondu, *Modern Nigerian Family Law & Practice : With Full Commentary on the Matrimonial Causes Rules 1983* (1st edn, Printable Publishing Company 2012). 72

¹⁶⁵. *Hyde v Hyde & Woodmansee* (1886) LR 1 PD 130 at 133.

¹⁶⁶ Pauls Prine Elizabeth "Polygamy | Polygamy, Multiple Wives, Polygyny" (*Encyclopedia Britannica*, December 26, 2023) <<https://www.britannica.com/topic/polygamy-marriage>> accessed 9 June 2025.

¹⁶⁷. Natarielle Powel 'Polygamy: Definition, Types & History' (*Study.com*, 21 November 2023) <<https://study.com/academy/lesson/what-is-polygamy-definition-history-lesson.html>> accessed 23 June 2025.

¹⁶⁸. (1971) NNLR 66

of marriage a man may not marry several women at once, but this does not take away his right to marry several wives as time goes on.¹⁶⁹ This means that it is possible for a couple who contracted polygamous marriage to remain monogamous if they so wish; however, statutory marriage is strictly monogamous.

A customary law marriage is the lifelong partnership of one man and one or more women.¹⁷⁰ The union extends even beyond the life of the man but terminates substantially at the death of the woman.¹⁷¹ Marrying under the customary law is one of the two ways of practicing polygamy in Nigeria. On the other hand, a person married under customary law is only potentially polygamous in as much as he remains in a one-man, one-woman relationship with his only spouse; he does not actually become polygamous until he marries other women.¹⁷²

Islamic Marriages are an important aspect of Nigeria's Islamic law and culture. They are usually performed in accordance with Maliki School of law. Islamic marriage is the other way of practicing polygamy in Nigeria, it is also potentially polygamous depending on the choice of the man to either practice monogamy or marry more wives. Unlike the customary marriage which has no restriction to the number of wives a man marries at a given time, Islamic marriage only allows the man to marry up to four wives at a time, depending on his capacity.¹⁷³

Therefore, intending couples have to decide on which of the above discussed type of marriage they intend to contract as they all have different legal implications both during their lifetime and beyond, especially when they die intestate.

Bigamy is the act of marrying one person while still legally married to another. It involves the intentional and wilful contract of a second marriage while a previous marriage subsists.¹⁷⁴ In Nigeria, bigamy is only applicable to statutory marriage; therefore, men who have the intention of contracting subsequent marriages in future have the options of other systems of marriage rather than subject themselves to this one in order to avoid later regrets. This paper addresses legal issue such as whether bigamy is still an offence under the Nigerian laws or not, what constitutes the

¹⁶⁹. Linus Onyekeozurule Nwauzi, *General principles of Nigerian Customary Law* (Rivers State University, 2019) 92.

¹⁷⁰. Nwogugu E.I, *Family Law in Nigeria*. (3rd edn, HEBN Publishers 2014) 9.

¹⁷¹. Anyebe, A. P, "Customary Law: The War Without Arms" (Fourth Dimension Publishers, Enugu 1985) 45.

¹⁷². Ajuzie C. Osondu, *Modern Nigerian Family Law & Practice : With Full Commentary on the Matrimonial Causes Rules 1983* (1st edn, Printable Publishing Company 2012) 73.

¹⁷³. Eric Aghadiuno, 'Nigerian Marriages: Islamic Law Marriage' <<https://onlinenigeria.com/marriages-in-nigeria/Islamic-Law-Marriage>> accessed 17 June 2025.

¹⁷⁴. Olasore, R. E., 'The Extent of Polygamy in Africa, Any Role for the Information Professionals in Curbing Further Spread?' [2016] 6(6) *Information and Knowledge Management*, 7-14.

offence of bigamy, whether religious conversion can be an excuse for bigamy, whether there is strict application of the punishments prescribed for the offence by the courts or not? and the remedies available to resolve the issues.

2.0 Legal Framework

The following are some statutory provisions regulating the offence of bigamy in Nigeria:

The Constitution of Federal Republic of Nigeria empowers the National Assembly to make laws for the peace, order and good government of the Federation or any part of the country with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule.¹⁷⁵ Item 61 of the Exclusive Legislative List further grants the legislature the power to make laws relating to the formation, annulment, and dissolution of marriage other than marriage under Islamic and Customary Law including matrimonial causes arising from them. This means that the National Assembly only has the power to legislate on relating to statutory marriage. However, customary law and Islamic law marriages fall outside this exclusive domain thereby leading to a lack of uniform legal provisions for marriage.

The Criminal Code defines bigamy as, - where any person who has a living spouse, marries another person, in any case in which such latter marriage is void by the reason of it taking place during the life of such husband or wife, is guilty of a felony and is liable to imprisonment for seven years.¹⁷⁶ In some cases, criminal law restricts duplicity of marriages, especially where the parties are not the same as those who contracted the earlier one because it will constitute the offence of bigamy.¹⁷⁷ Section 35 of the Marriage Act prohibits the marriage of a person who had earlier contracted a valid marriage under the Act to another person under another valid marriage.

Instances such as where a person who is in an existing statutory marriage contracts another marriage statutorily with a different spouse or where he previously contracts marriage under the Marriage Act and then marries another person under the native law and custom. The law will not permit an individual who is married in accordance to the Marriage Act to contract another marriage under customary law or vice-versa.¹⁷⁸ Where any of these is done, they constitute

¹⁷⁵. Constitution of Federal Republic of Nigeria 1999, s4(2).

¹⁷⁶. Criminal Code Act 1916, s370

¹⁷⁷. Bamgbose O and Akinbiyi S, *Criminal Law in Nigeria* (Nigeria, Evans Brothers (Publishers) Limited 2015) P. 186

¹⁷⁸. Okonkwo C.O and Naish M.E, *Okonkwo and Naish: Criminal Law in Nigeria* (3rd edn, Spectrum Books Limited 2018). 302

offence of bigamy under sections 46 and 47 of the Marriage Act and punishable with five years' imprisonment.¹⁷⁹ Bigamy therefore involves the intentional and wilful contract of a second marriage while a previous marriage subsists.¹⁸⁰

It is crucial to note that neither a certificate of decree nisi nor a formal separation makes a second marriage lawful. Aside from the possible exclusions stated above, only a divorce with a decree absolute or the death of one spouse can be considered a legal end to a marriage.¹⁸¹ A married couple may divorce after living two years apart if both parties agree. If one party does not consent, then they may divorce after seven years living apart. Exceptions to this include if a party can prove unreasonable behaviour within the marriage or adultery.¹⁸²

It is noted that bigamy has been decriminalized under the Lagos laws as a result of dearth of prosecution on it.¹⁸³ However, it remains an offence under the Marriage Act which applies to Lagos as the issue of statutory marriage is constitutional and it falls under the Exclusive Legislative List.¹⁸⁴ This situation has created more problems of conflict between the Federal and State legislations rather than solve the issue. Hence, it is possible for a Lagos resident offender of bigamy to be tried at the Federal High Court in that jurisdiction under the relevant provisions of the Marriage Act. From the above provisions of law, it is very clear and important to note that bigamy remains a valid offence in Nigeria until the National Assembly deems fit to remove it from the provisions of Marriage Act. In *Kuforiji & Anor v V.Y.B. (Nig) Ltd*,¹⁸⁵ the court held that although bigamy appears to be a dead letter offence, it is still an offence under the Nigerian statute books. It must therefore be given effective enforcement by way of diligent prosecution and the appropriate punishment prescribed by the laws must be strictly imposed.

¹⁷⁹. Marriage Act 1914.

¹⁸⁰. Olasore, R. E., 'The Extent of Polygamy in Africa, Any Role for the Information Professionals in Curbing Further Spread?' [2016] 6(6) *Information and Knowledge Management*, 7-14.

¹⁸¹. Ardens Law, 'Penalties for Bigamy in England and Wales' <<https://www.ardenslaw.com/bigamy-in-england-and-wales/>> accessed 11 March 2025.

¹⁸². Matrimonial Causes Act 1970, s15(2).

¹⁸³. Criminal Code Law of Lagos State Cap C17, Laws of Lagos State 2004, s370.

¹⁸⁴. Constitution of the Federal Republic of Nigeria 1999 as amended, Item 61 of the Exclusive Legislative List under Part 1 of the Second Schedule.

¹⁸⁵. (1981) LPELR-1716(SC) P 31, Para C.

3.0 Prevalence of Bigamy in Nigeria

Bigamy remains a prevalent issue that affects marriages in Nigeria and has significant effects on both society and the individuals. It is important to note that cases persist in spite of the above provisions of law prohibiting it which highlights gaps in enforcement and awareness.¹⁸⁶ Despite bigamy being stipulated by law, it can be referred to as a "dead letter law," meaning it is rarely enforced,¹⁸⁷ or better seen as a tiger on a paper as a result of ineffective enforcement. The lack of enforcement of this criminal action is the primary basis for this research study. There are several complex factors which contribute to bigamy's persistence in Nigeria despite express legal prohibitions, such as a lack of public awareness of the legal ramifications, cultural norms that accept or even encourage multiple marriages, and poor implementation of the laws.

The practice of polygamy and having multiple spouses is supported or even encouraged by some cultures and religion which makes it more difficult to enforce bigamy laws. This acceptance complicates the enforcement of provisions of laws that prohibit bigamy particularly in areas where customary laws are deeply rooted and where polygamy is widely accepted. Women in a patriarchal society like Nigeria are mostly the victims of bigamous relationships and are usually forced to keep silent as a result of societal norm.¹⁸⁸ Although bigamy is a felony, it is not treated seriously within the legal system, and it receives little enforcement and attention.¹⁸⁹ Several questions have arisen regarding whether the offence of bigamy should be retained in our statute. In *Awobudu v Awobudu & Ors*,¹⁹⁰ the deceased married a woman under the Marriage Act in 1944, and later married the plaintiff under Ijebu customary law in 1961 while still married to the first woman. After the husband's death, the plaintiff sought to be recognized as one of his wives and to participate in the administration of his estate. The court ruled against the plaintiff, stating that the customary law marriage was invalid under Section 35 of the Marriage Act. This section prohibits a person married under the Marriage Act from contracting a subsequent customary law marriage. However, just like other offences bigamy has some defences which may be relied upon if validly

¹⁸⁶. AbdulWasiu Kuforiji, 'Is Bigamy Legal in Nigeria?' (*Nigerian Finder*, 5 April 2023) <https://nigerianfinder.com/is-bigamy-legal-in-nigeria/#google_vignette> accessed 14 June 2025.

¹⁸⁷. Oludolapo Okunniga, 'Is bigamy a dead law' (*Tribune Online*, 13 April 2019) <<https://tribuneonline.ng.com/is-bigamy-a-dead-law/>> accessed 15 June 2025.

¹⁸⁸. 'A Brief Overview of Bigamy and Adultery under Nigerian Law' Resolution Law Firm <<https://www.resolutionlawng.com/a-brief-overview-of-bigamy-and-adultery-under-nigerian-law/>> accessed 16 June 2025.

¹⁸⁹. Ochem, C.E. & Emejuru, C.T., 'Bigamy in a Polygamous Society: A Critical Appraisal of the Law of Bigamy in Nigeria' [2017] 5(2), *Journal of Law and Criminal Justice*, 96-102.

¹⁹⁰. (1979)21 RN 339.

proved. Where a person who has been accused of committing bigamy successfully proves that the other spouse has been absent for a period of seven years with no form of communication taking place between both parties and the accused presumes the other party as dead, it will be regarded as a good defence.¹⁹¹ Another defence is that the accused based on reasonable grounds believed that the marriage is not valid.¹⁹²

3.1 Disposition of Nigerian Courts to Bigamy

While there are clear statutory provisions that criminalize bigamy, their enforcement is significantly compromised by the socio-cultural acceptance of polygamy within the country. Under Section 370 of the Criminal Code Act, anyone who is convicted of bigamy is liable to serve 7 years imprisonment; however, in most cases, the Court usually impose a lesser and ridiculous punishment different from the mandates of the law.

In *R v Princewill*,¹⁹³ the man married another woman during the subsistence of his marriage under the Act with his wife, the court found him guilty of the offence but only sentence him to one month imprisonment. Clearly, the defendant was rightly convicted for the offence; however, this sentencing is ridiculous and it constitutes one of the instances of under-punishment of a bigamy offender. Similarly, in *R v Inyang*,¹⁹⁴ Mr. Inyang married one Evelyn in 1923 in the registry office at Hammersmith, London. While this marriage subsisted, he went through another marriage under the Act in 1938 at the United Free Church, Duke Town, Calabar with one Esien. The Court held that the prosecution failed to prove bigamy when it relied solely on the marriage certificate from the first alleged marriage and evidence of the second marriage's celebration; it was concluded that no substantial case had been established to prove the fact that the wife of the initial marriage was alive as at the date of the subsequent marriage ceremony. Before a case of bigamy can be successfully proved before the court, the prosecution must establish that initial marriage was valid and subsisting and that the previous spouse is still alive.¹⁹⁵ Evidence of celebration of marriage alone without more will not suffice.

¹⁹¹. *R v Tolson* [1889] 23 QBD 168.

¹⁹². *R v King* [1963] 3 All ER 561.

¹⁹³. (1963) N.L.N.L.R 54.

¹⁹⁴. (1931) 10 N.L.R 33.

¹⁹⁵. *Ibid.*,

In an interesting case of *State v Ezeagbo Nweke*,¹⁹⁶ the accused entered into a customary law marriage with a man when she was young. Subsequently, she contracted a second customary law marriage with another man without formally dissolving the first. While both marriages were still purportedly in effect, she yet married the third man under the Marriage Act of 1950 and cohabited with him for two decades before facing charges of bigamy. The charges comprised four charges: bigamy under Section 370 of the Criminal Code Act, violation of Section 47 of the Marriage Act, false declaration of marital status in a marriage affidavit in contravention of Section 41 of the Marriage Act, and engaging in a statutory marriage ceremony with the third man, knowing it was null and void because of her subsisting marriage to the first man thereby contravening Section 46 of the Marriage Act. Court held that the circumstances of the case did not fall within the provisions of section 370 of the Criminal Code Act as she has entered two customary marriages before contracting a marriage under the Act, that the scenario does not depict a bigamous relationship but a marriage that is *void ab initio*.¹⁹⁷

With due respect to the court, this holden is wrong as it contradicts the said provision of Criminal Code and the clear provisions of section 46 of Marriage Act which prevents a person who is already married under the native law and custom to contract a subsequent statutory marriage with another person. The Supreme Court held in the case of *Ademola v Aina* that a bigamous marriage is *void ab initio* and must be treated as if it never existed. The Court also held that the children of a bigamous marriage are illegitimate and cannot inherit from their father.¹⁹⁸ However, the Constitution has provided a shield over such children, they can no longer be discriminated against on ground of the circumstances surrounding their birth because they are innocent.¹⁹⁹ In *Adeoye v Adeoye & Anor*,²⁰⁰ the court held that getting married as a result of adultery while a contract of marriage with another person constitutes the offence of bigamy.

¹⁹⁶. Charge No. O/IIC/1971 (High Court, Onitsha—unreported); Charles Emeka and C T Emejuru, 'Bigamy in a Polygamous Society: A Critical Appraisal of the Law of Bigamy in Nigeria' [2017], *Journal of Law and Criminal Justice* <https://www.researchgate.net/profile/CtEmejuru/publication/333784200_Bigamy_in_a_Polygamous_Society_A_Critical_Appraisal_of_the_Law_of_Bigamy_in_Nigeria/links/5d03cda6458515b055d0c764/Bigamy-in-a-Polygamous-Society-A-Critical-Appraisal-of-the-Law-of-Bigamy-in-Nigeria.pdf> accessed 10 June 2025.

¹⁹⁷. Charge No. O/IIC/1971 (High Court, Onitsha—unreported).

¹⁹⁸. (1958) 31 ALL NLR 31.

¹⁹⁹. Constitution of Federal Republic of Nigeria 1999, s42(2).

²⁰⁰. (2024) LPELR-62221(CA) P 71 Para D.

The rate at which Nigeria men commit bigamy with flagrant disregard to the position of law is alarming and corroborates how the society have been condoning the offence including the law enforcement agencies. Among many others, Yul Edoche, a Nollywood actor, politician and social media influencer married one Judy and have a child with her after contracting a statutory marriage with May Edoche. Like other Nigerian offenders to bigamy, he was also boastful about it on social media platforms.²⁰¹ Sadly, the law enforcement agencies are yet to arrest and prosecute him for the offence. This further supports the nonchalant attitude of Nigerians towards the offence; however, they were quick to arrest and prosecute the likes of Funke Akindele, a Nollywood actress and producer for violating Covid-19 restriction Order;²⁰² BobRisky,²⁰³ a cross-dresser and social media influencer for Naira mutilation and many other celebrities for other offences.

It is to be noted that law enforcement agencies need no permission of anybody before they prosecute this offence because crimes are offences against the state, not individuals. Therefore, whether the affected party reports the case or consents to prosecution or otherwise, they are to swiftly perform their statutory duties the moment there are evidence of commission of the offence as in Yul Edoche's instance who made public boast of his crime.²⁰⁴

3.2 Bigamy by Conversion

Another legal and constitutional issue is whether a change of way of life or religion affects a validly contracted marriage under the Act. This issue has generated controversies as to whether the change nullifies the legal implications of his previous marriage such that it gives him the opportunity to start afresh.

In *R v Princewill*,²⁰⁵ one Bartholomew Princewill married one woman in 1950 under the Marriage Act in a church. At the time he contracted the first marriage under the Act, he was still a Christian. When he became a Muslim, he equally contracted another marriage with a woman named Fatima

²⁰¹. Jerry Obanyero, 'Yul Edoche: Polygamy or Crime of Bigamy' (The Cable, 29 April 2022) <<https://www.thecable.ng/yul-edochie-polygamy-or-the-crime-of-bigamy/>> accessed 16 June 2025.

²⁰². 'Court Sentence Funke Akindele, Husband to 14 Days Community Service' (*Lagos State Ministry of Justice*, 23 December 2020) <<https://lagosstatemoj.org/2020/12/23/court-sentences-funke-akindele-husband-to-14-days-community-service/>> accessed 24 June 2025.

²⁰³. 'Naira Abuse: Lagos Court Convicts Bobrisky, Defers Sentence Till April 9' (*Economic and Financial Crimes Commission*, 5 April 2004) <<https://www.efcc.gov.ng/efcc/news-and-information/news-release/9953-naira-abuse-lagos-court-convicts-bobrisky-defers-sentence-till-april-9>> accessed 23 June 2024.

²⁰⁴. Jerry Obanyero, 'Yul Edoche: Polygamy or Crime of Bigamy' (The Cable, 29 April 2022) <<https://www.thecable.ng/yul-edochie-polygamy-or-the-crime-of-bigamy/>> accessed 16 June 2025.

²⁰⁵. (1963) N.L.N.L.R 54.

and this took place in 1960. The Court, while examining the case brought before it stated that there must be the existence of a yet-to-be-terminated marriage for the crime to be committed, that is to say, that there must be two marriages in existence. The court though convicted him for the offence, only sentence him to one month imprisonment. Recently, the Court of Appeal decided the case in *Mohammed & Ors v Mohammed & Anor*.²⁰⁶ The facts are that a Muslim Army Major, married the 2nd Appellant under the Act, he subsequently married two other women under Islamic law and later died intestate. Upon his death, the other wives sought to be recognized as legal co-wives with the first woman. The Court of Appeal held that the deceased's subsequent marriages under Islamic law were valid because a Moslem can marry up to four women at a time and that Islamic marriage is constitutionally recognized in Nigeria. With all due respect to the court, this decision does not represent the true principle of law on bigamy which is that any person who contracts a valid statutory marriage with a person and goes ahead to contract subsequent marriage with other person commits a criminal offence of bigamy as decided in *Ademola v Aina*.²⁰⁷ This principle is also in tandem with the statutory provisions in both Criminal Code and Marriage Act which criminalise the act.²⁰⁸ The court ought to have treated the subsequent marriages as bigamous and illegal as in the case of *Awobudu v Awobudu & Ors*,²⁰⁹ and *R v King* where the court rejected the defendants excuse for bigamy on ground of religion.²¹⁰ The decision has altered the said principle and may give people the opportunity to keep violating the law.

The question that pokes the mind is why would a devout Muslim who subjected himself to Islamic law went to contract a statutory marriage initially, knowing fully well that he would not be able to keep up to a monogamous style of marriage that is opposite to his belief and practice? It is an example of an inconsistent way of life and practice which is capable of creating problems for their dependents and families if they die intestate as in this instance.

It is to be noted that statutory marriage is a choice; therefore, anyone who intends to practice polygamy is not expected to contract it. This decision may also open room for statutory marriage couples to pursue subsequent marriages with other persons under native law and custom which

²⁰⁶. [2024] LPELR-62831(CA)

²⁰⁷. (1958) 31 ALL NLR 31.

²⁰⁸. Criminal Code Act 1916, s 370 and Marriage Act 1914, ss 46 & 47.

²⁰⁹. (1979)21 RN 339.

²¹⁰. (1964) 1 QB 285.

may lead to many broken homes. To avoid this chaos which is already created, the final decision of the apex court on this issue will be of great relevance.

From the above, it is clear that judicial precedents regarding bigamy are limited, not because of any uncertainty in the law, but rather due to the law's practical inaction within a legal system that infrequently initiates prosecutions for this crime. This raises concerns about the true efficacy of bigamy laws in Nigeria and their capacity to act as a deterrent. Bigamy, although less frequently addressed in legal discussions compared to other criminal offences, constitutes a vital element of family law in Nigeria. The scarcity of reported bigamy cases does not undermine the importance of the judicial decisions that have been arrived at and the case laws established as they provide essential insights into the interpretation and application of relevant laws. Even with a limited number of cases, the established judicial precedents have been pivotal in defining the legal implications of bigamy and in shaping the expectations of matrimonial conducts in Nigeria.

4.0 Bigamy in the United Kingdom (UK)

Many of the laws in effect in Nigeria were either handed to us by the British colonial masters or copied from them, especially the marriage laws. Therefore, there is need to enquire into the UK marriage system whether bigamy is still an offence and to ascertain the disposition of courts towards the offence. In England, bigamy carried a death penalty a few centuries ago by virtue of the Bigamy Act of 1604 which made it a criminal offence to marry someone while still married to someone else.²¹¹ Since 1861, the punishment to the offence has been reduced to a maximum of seven years imprisonment and or a fine under Section 57 of the Offences Against the Person Act. The law states that a person who is married in England or Ireland, or elsewhere, is not permitted to enter into a new marriage while their former spouse is still living. The law also provided some exceptions as defences to the offence, such as if a person has had no contact with their spouse for a period of seven years or more and has no knowledge of their whereabouts or their state of health, or if they genuinely believed that their marriage had been dissolved.²¹² Therefore, it is possible to remarry without facing consequences if a person hasn't spoken to their spouse for seven years or longer and does not know where they are or how they're doing. If an individual has married more

²¹¹. Ardens Law, 'Penalties for Bigamy in England and Wales' <<https://www.ardenslaw.com/bigamy-in-england-and-wales/>> accessed 11 May 2025.

²¹². Cox David, 'Trying To Get A Good One' Bigamy Offences in England and Wales, 1850-1950' (2012) 4 The Plymouth Law & Criminal Justice Review 1

than one person in a nation where having many spouses is lawful, they are often not arrested if they come to England until they remarry.

The case of *R v Tolson*,²¹³ which is one of the most significant cases in bigamy law as it established the principle of "honest and reasonable mistake." In this case, the defendant remarried in good faith after believing that her first husband had died in a shipwreck as he had been absent for over five years. The Court ruled that since she had a reasonable belief in her first husband's death, she lacked criminal intent, leading to her acquittal. This case set a precedent for how bigamy is interpreted when a spouse is genuinely believed to be deceased.

The law also recognises void marriages, which are marriages that are considered invalid from the beginning due to bigamy. In order for a bigamy case to be successfully prosecuted, it must be proven that both marriages were legally valid and that the accused knowingly entered into a second marriage while still legally bound to their first spouse.²¹⁴ The legal framework aims to protect the sanctity of marriage and ensure individuals do not deceive or harm their spouses through multiple marriages. Additionally, individuals found guilty of bigamy may also be liable to fines and other legal repercussions. The severity of the punishment can be influenced by factors such as the number of marriages involved, the intent to deceive, and the impact on the parties involved. The aim of these punishments is to deter individuals from committing bigamy and to uphold the institution of marriage as defined by the law.

In the United Kingdom, the case of *Hyde v Hyde & Woodmansee* established that a subsequent marriage entered into while a previous valid marriage is still in effect is void.²¹⁵ This case set a precedent for determining the validity of marriages in cases involving bigamy. In *R v King*,²¹⁶ this case involved a man who married a second wife under an Islamic ceremony while still legally married to his first wife under the UK Law. His defense was that the second marriage was religious rather than legally recognized. However, the Court ruled that it constituted bigamy because it had been conducted with the intention of forming a marital relationship. King was sentenced to a suspended prison term, demonstrating how cultural and religious factors can intersect with legal principles. The court rightly convicted the Defendant for committing bigamy

²¹³. (1889) 23 QBD 168.

²¹⁴. Luke Horton, 'Divine Suppressors: Bigamy in the Eighteenth-century Criminal Justice System' (2020) 10(2) Armstrong Undergraduate Journal of History 31

²¹⁵. (1866) LR 1 PD 130.

²¹⁶. (1964) 1 QB 285.

unlike the position of the Nigerian court in *Mohammed & Ors v Mohammed & Anor* where the subsequent marriages were held valid.²¹⁷

In *R v Gould*,²¹⁸ the defendant remarried after believing his first marriage was invalid. He was convicted of bigamy but appealed on the grounds that he had an honest belief that his first marriage was not legally binding. The Court of Appeal ruled that an honest belief in the invalidity of the first marriage could be a defense to bigamy, reinforcing the need for criminal intent in such cases. Despite clear legal prohibitions, bigamy still occurs in the UK, often involving individuals who marry abroad or in religious ceremonies not officially registered with the State. The rise of digital marriage records and cross-border legal cooperation has made it more difficult for offenders to evade detection.²¹⁹ However, cases such as *R v King* sparked legal debates about religious and cultural practices that do not align with UK Civil Law.²²⁰ Therefore, bigamy remains a criminal offense in the UK but its prosecution depends on intent, evidence, and circumstances surrounding the alleged offense.

5.0 Conclusion and Recommendations

Marriage is a beautiful relationship parties entered freely. Therefore, it should not be ended on a bad note or used as a medium to deceive or hurt the emotions of another person. The reality in Nigeria is that a statutory marriage often coexists with a subsequent marriage, which contravenes the clear provisions of law. Unlike other offences, the legal implications of bigamy are not well-known to the public which is basically as a result of the widespread practice of polygamy in many cultural settings. Bigamy is an offshoot of polygamy but it is criminalized when it is practiced in a statutory marriage due to its strict monogamous nature hence, the necessity to carefully and wisely select the appropriate system of marriage that suits one's lifestyle. This study finds and concludes that the commission of bigamy persist in Nigeria as a result of the polygamous nature of the society coupled with the lack of will to prosecute, convict or sentence offenders to the crime appropriately. It therefore recommends as follows:

²¹⁷. [2024] LPELR-62831(CA)

²¹⁸. *R v Gould* (1968) 2 QB 65.

²¹⁹. Radina, S., 'Digital evidence: Unaddressed threats to fairness and the presumption of innocence' [2021]42 *Computer Law & Security Review*, 1-20.

²²⁰. (1964) 1 QB 285.

That, there is need for a quick legislative action in harmonizing the punishment stipulated for the offence of bigamy in the Criminal Code Act and the Marriage Act. There should be a uniform and precise punishment in the laws for the same offence. This will reduce confusion of courts and prosecution as to which statute to apply.

That, in order to effectively reduced and control the prevalence of the crime, there is a serious need to carry out public awareness in respect of the existence of the offence to Nigerians by the government, legal practitioners and other civil society groups. This is particularly important because the act of celebrating a subsequent marriage is acceptable in other systems of marriage as a result of which the society will continue to tolerate it if necessary action is not taken. Bringing this the consciousness of the public will reduce the impact of the offence on the sanctity of marriage and the sanity of the society.

That, the courts also need to start imposing the applicable punishment to the offence as stipulated by the laws. This is because bigamy is still a valid offence in Nigeria until it is so expunged from the criminal laws. Excuses for not imposing the appropriate punishment to the offence has to stop being made such as in the case of *State v Ezeagbo Nweke*,²²¹ where the court imposed a ridiculous 2 month imprisonment on the defendant with an option of fine on the ground that Nigeria is a polygamous society by nature and people are ignorant of the offence.

That, the legislature must take a decisive action as to whether to retain the offence in the Nigerian laws or not. The situation created by the Lagos State House of Assembly is confusing as decriminalization of it under the state criminal laws conflicts with the provisions of the Marriage Act because the said Act is applicable in Lagos, especially at the Federal High Court.²²² For there to be a valid decriminalisation of bigamy, both the Criminal Code and the Marriage Act must be amended to that effect. That, the parties to *Mohammed & Ors v Mohammed & Anor*.²²³ are encouraged to further appeal the matter to the Supreme Court for a final clarification on the issue whether or not the act of marrying another person after validly contracting a statutory marriage constitute bigamy.

²²¹. Charge No. O/IIC/1971 (High Court, Onitsha—unreported).

²²². Criminal Code Law of Lagos State Cap C17, Laws of Lagos State 2004, s 370.

²²³. [2024] LPELR-62831(CA)

LEGISLATIVE DISCIPLINE IN THE NIGERIAN LEGISLATURE: A COMPARATIVE LENS

Usman Ibrahim*

Abstract

This paper examines legislative discipline in the Nigerian legislature through a comparative lens, focusing on the constitutional and legal frameworks governing the discipline of lawmakers by legislative leadership. The study investigates whether prolonged suspensions align with the principles of natural justice and their implications for democratic representation and governance. It critically assesses the extent to which disciplinary processes uphold constitutional safeguards and whether such actions infringe on the rights of elected representatives and their constituents. The research aims to (1) analyse the legal basis for legislative discipline under Nigerian law, (2) evaluate adherence to procedural fairness in disciplinary proceedings, (3) assess the impact of suspensions on democratic representation, and (4) explore the role of judicial intervention in legislative disciplinary matters. Using a doctrinal legal research methodology, the study employs a qualitative approach, examining constitutional provisions, legislative rules, judicial precedents, and comparative practices from jurisdictions such as the United States and the United Kingdom. The findings reveal significant gaps in transparency and procedural consistency, highlighting the need for reforms to prevent abuses of power and ensure compliance with the rule of law. The paper concludes by advocating for legal and institutional reforms to strengthen due process, enhance accountability, and align Nigeria's legislative disciplinary mechanisms with global best practices.

Keywords: *Legislative discipline, Nigerian legislature, Suspension of lawmakers, Natural justice, Constitutional safeguards, Democratic representation.*

1. Background

Preserving legislative integrity and democratic principles depends on maintaining law and order within the legislative house. As lawmakers perform their legislative duties, they must maintain professional behaviour and respect because their conduct establishes the standard for government operations and public faith in democratic systems.²²⁴ The enforcement of discipline in legislative settings requires an understanding that lawmakers function as representatives of their constituents rather than as employers or subordinates to each other. Their collaborative relationship seeks equal representation instead of following an employer-employee hierarchy. Disciplinary actions against members who violate rules must adhere to democratic principles which guarantee fairness and due process while respecting the individual mandates of their voters. The legislature

* PhD, LL.M, BL, Senior Research Fellow, Department of Legislative Support Services (Bills and Legislative Drafting Division), National Institute for Legislative and Democratic Studies (National Assembly) Abuja – Nigeria. 08036263860 Email: smnibrahim2@gmail.com.

²²⁴ Gagbadebo, O & Francis, S, 'Power Relations among Nigerian Legislators', (2016) 1(1) *Nigerian Journal of Legislative Affairs* 100.

maintains its legitimacy when it follows these principles because it helps to reinforce the democratic rule of law.

Parliamentary governance depends on legislative house leadership's management of members' behaviour, which preserves order and ethical standards within the legislative body.²²⁵ Both national and subnational legislative bodies have implemented internal rules and disciplinary systems to govern their members' behaviours.²²⁶ Depending on the severity of the misconduct, disciplinary measures can involve reprimands, suspensions, or expulsion.²²⁷ The use of disciplinary powers by legislative bodies has generated considerable legal and constitutional debates about fair hearing principles and natural justice and raised concerns about power abuse within legislative leadership.²²⁸ Parliaments must enforce internal discipline, but many now question whether these measures violate the democratic rights of legislators and their voters.²²⁹

The main concern about legislative suspensions involves how they interfere with democratic representation. The people elect lawmakers to express their interests through legislation and actions that block lawmakers from fulfilling their responsibilities, removing their constituents' right to representation.²³⁰ The enforcement of suspensions often lacks clear procedural safeguards, which leads to concerns about transparency and proper adherence to due process.²³¹ The Nigerian context highlights this issue because legislative suspensions sometimes appear politically motivated and function as mechanisms to silence dissenting legislators.²³² The courts have acted to revoke these suspensions on occasion while stressing that legislative discipline must follow constitutional boundaries.²³³

The relationship between legislative independence and judicial supervision continues to be a problematic matter in systems of parliamentary governance.²³⁴ Legislatures possess the power to manage their internal regulations but must execute these powers in compliance with constitutional

²²⁵ Aguda, TA, *'The Judiciary in the Government of Nigeria'* (New Horn Press 2000).

²²⁶ Nwabueze, BO, *Constitutionalism in the Emergent States* (C. Hurst & Co. 1973).

²²⁷ Oyewo, O, 'The Rule of Law and Legislative Disciplinary Powers in Nigeria' (2010) 4(2) *Nigerian Journal of Legislative Studies* 45.

²²⁸ Odike, EO, *Legislative Process and Discipline in Nigeria* (Abuja Press 2015).

²²⁹ Ajulo, SB, 'Legislative Immunity and the Limits of Parliamentary Privilege in Nigeria' (2017) 6(1) *University of Ilorin Law Journal* 85.

²³⁰ *Dino Melaye v Senate President & Ors* (2018) LPELR-43973(CA).

²³¹ *Hon. Ali Ndume v Senate of Nigeria & Anor* (2019) 7 NWLR (Pt. 1671) 1.

²³² *Hon. Ifedayo Abegunde v Ondo State House of Assembly* (2015) 8 NWLR (Pt. 1461) 314.

²³³ Eze, CB, 'The Judiciary as a Check on Legislative Excesses in Nigeria's Democracy' (2015) 2(3) *African Journal of Constitutional Law* 102.

²³⁴ *Ibid.*

and legal protections.²³⁵ The judiciary frequently examines legislative disciplinary actions to determine if they infringe upon lawmakers' rights regarding fair hearing principles and natural justice standards.²³⁶ Studies of legal practices from various jurisdictions demonstrate that effective disciplinary measures require comprehensive guidelines and transparent processes that allow legislators to seek legal remedies if they suffer wrongs.²³⁷ This research investigates legislative discipline from legal foundations and procedural justice perspectives while highlighting its effects on democratic governance to propose necessary reforms that establish due process protections in disciplinary actions.²³⁸

2. Legal Framework For Suspending a Legislator in Nigeria

The process of disciplining/suspending a legislator by the leadership of a legislative house in Nigeria needs to follow constitutional guidelines, legislative rules, judicial decisions, and democratic standards.²³⁹ Legislative bodies have the authority to enforce order and discipline among members, yet they must operate within legal boundaries and uphold representative principles and due process rights.

2.1 The Constitution of the Federal Republic of Nigeria 1999

The Constitution of the Federal Republic of Nigeria 1999 outlines the authority of legislative bodies and the rights granted to members of the bodies. The National Assembly at the federal level and State Houses of Assembly across states hold legislative powers under Section 4, which enables them to create laws essential for effective governance. Section 60 authorises the Senate and House of Representatives to control their procedures through their Standing Orders, including creating disciplinary rules. The authority given to State Houses of Assembly by Section 101 lets them create rules for discipline management and internal affairs regulation.

The Constitution explicitly states certain conditions under which a legislator may lose their seat. According to the Constitution²⁴⁰ legislators who defect from their sponsoring political party may lose their seats, but these sections do not provide explicit power to suspend members. Disciplinary actions, including suspension, must originate from each legislative house's internal

²³⁵ Sections 60 and 101 of the Constitution of the Federal Republic of Nigeria, 1999.

²³⁶ Eze, CB (n10) 2.

²³⁷ Ibid.

²³⁸ The North Journals, 'The Controversial History of Legislative Suspensions in Nigeria', (March 2025) <<https://thenorthjournals.com/the-controversial-history-of-legislative-suspensions-in-nigeria/>> accessed 18 March 2025.

²³⁹ ConstitutionNet, 'Laws for Suspension in Nigerian Senate Conflict with Constitution', (April 2018) <<https://constitutionnet.org/news/op-ed-laws-suspension-nigerian-senate-conflict-constitution>> accessed 18 March 2025.

²⁴⁰ Sections 109(1)(f) and 68(1)(g) of the CFRN 1999

rules and standing orders. The power given to legislative bodies through rules to maintain order and discipline requires enforcement that complies with constitutional protections to avoid arbitrary actions. The constitutional power that legislative houses hold to control their own procedures²⁴¹ carries limitations in execution. The rights of lawmakers and their constituents require disciplinary actions, including suspensions, to respect democratic principles through fair hearings and judicial oversight. Excessive suspensions violate constitutional protections while depriving affected individuals of adequate representation. Legislative bodies may impose sanctions on members who err but must ensure these actions are lawful and proportionate without violating the basic democratic rights of elected officials.

2.2 Legislative Houses (Powers and Privileges) Act, 2018

The Legislative Houses (Powers and Privileges) Act 2018 provides the legal framework for the powers, privileges, and immunities of members of the National Assembly and State Houses of Assembly in Nigeria. It ensures that legislators can perform their duties without undue interference by granting them immunity from civil or criminal liability for statements made during legislative proceedings.²⁴² Additionally, the Act empowers legislative houses to summon witnesses and compel the production of documents in the course of their investigations,²⁴³ reinforcing the legislature's oversight and investigative functions. Furthermore, the Act recognises the authority of legislative houses to enforce discipline and punish acts of contempt, including disrupting proceedings, refusing to appear before the house, or disobeying lawful orders.²⁴⁴ It also grants legislative bodies the power to enforce compliance with their decisions, including taking disciplinary actions against members where necessary.²⁴⁵ However, such powers must be exercised within the bounds of the law, ensuring that due process and democratic principles are upheld. While reinforcing legislative autonomy, the Act does not permit arbitrary actions that could undermine lawmakers' constitutional rights.

The Act provides a basis for disciplinary measures but does not override constitutional provisions on fair representation. Courts have ruled that suspending a lawmaker for an excessive period or

²⁴¹ Sections 60 and 101 of the CFRN 1999

²⁴² Section 3 of the Legislative Houses (Powers and Privileges) Act, 2018.

²⁴³ Sections 4–9 of the LHPPA 2018.

²⁴⁴ Sections 14–17 of the LHPPA 2018.

²⁴⁵ Section 21 of the LHPPA 2018.

without due process could violate democratic principles.²⁴⁶ While legislative houses can regulate their procedures under Sections 60 and 101 of the Constitution, their disciplinary actions must align with constitutional safeguards, ensuring that lawmakers' rights and their constituents' representation are not unduly infringed upon.²⁴⁷

2.3 Standing Orders of the Senate, House of Representatives, and State Houses of Assembly in Nigeria

The Standing Orders of the Senate, House of Representatives, and State Houses of Assembly are the internal rules that govern the conduct of legislative business in Nigeria. The National Assembly derives its power to issue these orders from Section 60 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). State Houses of Assembly use Section 101 to regulate their proceedings, business orders, and disciplinary actions.

Each legislative house's Standing Orders detail the procedural rules for bill introduction, debate, and passage and include guidelines for maintaining member order and discipline. Legislative proceedings include systems for member suspension and enforcement of decorum alongside session management. Essential rules enable legislative bodies to function effectively and maintain democratic standards. The Standing Orders of the National Assembly apply independently to the Senate and House of Representatives. However, every State House of Assembly maintains Standing Orders that match its specific legislative framework. Each legislative body must adhere to constitutional guidelines and established court rulings to prevent power misuse.

Evidence Act, 2011

The Evidence Act 2011 is the principal legislation governing the admissibility, relevance, and evaluation of evidence in judicial proceedings in Nigeria. It applies to all courts in the country and provides a legal framework for determining what constitutes credible and admissible evidence in both civil and criminal cases. The Act ensures fairness, transparency, and reliability in administering justice by setting clear guidelines on how evidence should be presented and evaluated in court. The Act covers various aspects of evidence law, including the burden of proof, oral and documentary evidence, electronic evidence, confessional statements, witness testimonies,

²⁴⁶ BarristerNG, 'The Constitutional Quandary: Analysing the Illegality and Unconstitutionality of the Suspension of Senator Natasha Akpoti-Uduaghan', (March 2025) <<https://barristerng.com/the-constitutional-quandary-analyzing-the-illegality-and-unconstitutionality-of-the-suspension-of-senator-natasha-akpoti-uduaghan/>> accessed 18 March 2025.

²⁴⁷ Falana, Femi, 'How the Courts Stopped Illegal Suspension of Nigerian Legislators', Premium Times (March 2025) <<https://www.premiumtimesng.com/opinion/779722-how-the-courts-stopped-illegal-suspension-of-nigerian-legislators-by-femi-falana.html>> accessed 18 March 2025.

and judicial notice. For example, Sections 37–84 deal with documentary evidence, including electronic records, which are now admissible in Nigerian courts, provided they meet certain conditions.²⁴⁸ The Act also addresses the credibility of witnesses, rules on hearsay evidence, and the admissibility of confessions, ensuring that the courts consider only legally obtained and relevant evidence. The Evidence Act is crucial in guiding decision-making in legislative and judicial contexts, particularly in constitutional and administrative law cases. It ensures that disciplinary actions, including the suspension of legislators, are based on legally admissible evidence rather than arbitrary decisions. Thus, any action taken within a legislative house that could affect the rights of a member must align with the principles of fair hearing, due process, and the rule of law as established under the Act.

3 A case study of the suspension of Senator Natasha Akpoti Uduagha of the 10th Senate of the Nigerian National Assembly

Background

In early 2025, Nigerian Senator Natasha Akpoti-Uduaghan accused Senate President Godswill Akpabio of sexual harassment, alleging the incident occurred on 8 December 2023. Akpabio denied the allegations, questioning their timing and suggesting they emerged only after her committee assignments changed.²⁴⁹

Subsequently, on 6 March 2025, the Senate suspended Akpoti-Uduaghan for six months, citing violations of Sections 6.1 and 6.2 of the Senate Standing Orders 2023. The suspension was attributed to her alleged misconduct, including refusing to sit in her assigned seat, speaking without recognition, and making abusive remarks against Senate leadership. Her suspension included barring access to her office, withholding her salary, and withdrawing her security details.²⁵⁰ Akpoti-Uduaghan contended that her suspension was a tactic to silence her, labelling it an assault on democracy. Women's rights groups condemned the suspension, organising protests under the banner "We are all Natasha," highlighting gender inequality in Nigeria's politics. In

²⁴⁸ Sections 37–84 of the Evidence Act, 2011.

²⁴⁹ The Guardian, 'Nigerian Senator Suspended After Sexual Harassment Allegations against Senate President', (16 March 2025) <https://www.theguardian.com/world/2025/mar/16/senator-sexual-harassment-claims-nigeria-natasha-akpoti-uduaghan?utm_source=chatgpt.com> accessed 18 March 2025.

²⁵⁰ BBC Africa, 'My Suspension is a Means of Silencing Me - Natasha Akpoti-Uduaghan', (March 2025) <https://www.youtube.com/watch?v=gOmHBuGOiHc&utm_source=chatgpt.com> accessed 18 March 2025.

response, Akpoti-Uduaghan escalated the matter by presenting her case at a United Nations forum, seeking international intervention to hold the Nigerian Senate accountable.²⁵¹

The Senate Committee on Ethics, Privileges, and Public Petitions initiated its investigation into Senator Natasha Akpoti-Uduaghan's conduct on 5 March 2025. The hearing commenced at 2:58 p.m., with Senator Akpoti-Uduaghan notably absent, despite being scheduled to appear.²⁵² During this session, Senator Yemi Adaramodu, the Senate spokesperson; Senator Titus Zam, chairman of the Rules and Business Committee; and the Senate's sergeant-at-arms, provided testimonies. The hearing concluded around 4:00 p.m. on the same day. Based on the testimonies of the Senate representatives, the Senate suspended Akpoti-Uduaghan for six months, citing violations of Sections 6.1 and 6.2 of the Senate Standing Orders 2023.

Comments

The trial of Senator Natasha Akpoti-Uduaghan before the Senate Committee on Ethics, Privileges, and Public Petitions appears to have been politically motivated, as it was conducted hastily and failed to adhere to constitutional safeguards for fair hearing. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the right to a fair hearing under Section 36, which mandates that any individual accused of wrongdoing must be given adequate time and opportunity to present their defence. However, the committee proceeded with its investigation despite the Senator's absence at the scheduled hearing, without affording her a second or third opportunity to appear and respond to the allegations. The refusal to accommodate her absence raises concerns about procedural fairness and suggests that the outcome was premeditated rather than based on a balanced review of the facts. Furthermore, the Evidence Act provides that decisions in disciplinary or judicial proceedings should be based on credible evidence from both parties. The committee, however, proceeded to rely on testimonies from Senate officials and security personnel while failing to secure direct testimony from the accused Senator before concluding. Best practices in disciplinary proceedings require that multiple opportunities be given to an accused person to ensure that no miscarriage of justice occurs. In this case, the failure of the committee to exercise due diligence in obtaining the Senator's defence before recommending her

²⁵¹ Ibid.

²⁵² The Cable, 'Natasha Akpoti Absent as Senate Probes Seating Arrangement Fiasco', (5 March 2025) <https://www.thecable.ng/natasha-akpoti-absent-as-senate-probes-seating-arrangement-fiasco/?utm_source=chatgpt.com> accessed 18 March 2025.

suspension raises serious questions about whether the decision was made in good faith or was a politically motivated attempt to silence a dissenting voice in the Senate.

The Senate, in exercising its disciplinary powers, must ensure that its actions align with the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Evidence Act, the Legislative Houses (Powers and Privileges) Act, 2018, and its Standing Orders of 2023 to arrive at a reasonable and legally sound decision regarding the suspension of a senator. The CFRN guarantees a fair hearing under Section 36, ensuring that an accused lawmaker can defend themselves adequately. The Evidence Act mandates that decisions be based on credible testimony from all parties involved, preventing arbitrary actions. The Legislative Houses (Powers and Privileges) Act, 2018 outlines legislators' privileges and disciplinary procedures, emphasising due process. The Senate Standing Orders 2023, which regulate internal proceedings, must also be strictly followed to maintain procedural integrity. Failing to harmonise these legal frameworks before taking disciplinary action against a senator could render the suspension unlawful, unconstitutional, and susceptible to judicial review.

4 Analysis of Selected Judicial Interventions for Suspending a Legislator in Nigeria

*Ali Ndume v. Senate President & Ors*²⁵³

The Court of Appeal's decision in *Ali Ndume v. Senate President & Ors* (2018) LPELR-43910(CA) underscores the principle that legislative bodies cannot arbitrarily suspend lawmakers in a manner that infringes on their constitutional rights. The court ruled that the 90-day suspension of Senator Ali Ndume was unlawful, emphasising that such disciplinary measures must not be excessive or punitive beyond reasonable limits. This decision reaffirmed the right of legislators to represent their constituents, as guaranteed under Section 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which vests legislative powers in elected representatives. The ruling checks against potential abuse of power by legislative leadership, ensuring that internal disciplinary actions do not undermine democratic representation. Furthermore, the judgment aligns with the Legislative Houses (Powers and Privileges) Act, 2018, which grants legislative bodies the authority to regulate their proceedings but does not permit indefinite or excessively prolonged suspensions that would deprive constituents of representation. The Court of Appeal made it clear that legislative discipline must be exercised within the

²⁵³ (2018) LPELR-43910(CA)

boundaries of constitutional and statutory provisions, ensuring that no lawmaker is unfairly silenced for political reasons. The ruling also reflects the principles of fair hearing under Section 36 of the CFRN, reinforcing that legislators must be given due process before any disciplinary measure is enforced.

This case sets an important precedent in legislative jurisprudence, highlighting the necessity for due process, proportionality, and respect for democratic mandates when imposing sanctions on lawmakers. It further suggests that any suspension exceeding a reasonable time-frame—typically 14 days, as seen in comparative legislative frameworks—is unconstitutional. In light of this, any future suspension, such as that of Senator Natasha Akpoti-Uduaghan, must comply strictly with constitutional provisions, the Evidence Act, the Legislative Houses (Powers and Privileges) Act, and the Senate Standing Orders to withstand legal scrutiny. Failure to adhere to these legal safeguards exposes legislative actions to judicial intervention and potential nullification.

***Honourable Abdulmumin Jibrin v. Speaker House of Representatives & Ors.*²⁵⁴**

Federal High Court Abuja ruled on the case initiated by Hon. The Federal High Court decision involving Hon. Abdulmumin Jibrin's case against his 180-day suspension confirmed the constitutional restrictions on legislative houses' disciplinary powers. The court determined that under the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the House of Representatives cannot suspend a legislator for even one day. The court ruling reflects the principle that elected legislators represent their voters, and any actions limiting their duties require explicit constitutional and legislative provisions. When the court ruled the suspension unconstitutional, it affirmed lawmakers' fundamental right to engage in legislative sessions free from excessive restrictions. The ruling demonstrates the essential nature of due process and fair hearings in disciplinary measures taken against members of legislative bodies. Section 36 of the CFRN protects individuals by ensuring they receive a chance to voice their defence before receiving any punishment. The ruling shows that legislative privileges outlined in the Legislative Houses (Powers and Privileges) Act, 2018 prevent indefinite suspension of elected representatives. The proper method for handling misconduct allegations is to follow internal disciplinary processes that honour democratic principles or seek judicial intervention when required. This judgment prevents legislative bodies from silencing opposing voices without proper cause while claiming to maintain order. This case establishes an important legal precedent that opposes

²⁵⁴ FHC/ABJ/CS/595/16

suspensions based on political reasons, demonstrated by the recent suspension of Senator Natasha Akpoti-Uduaghan. Legislative bodies must adhere to the CFRN guidelines and multiple legislative acts for disciplinary measures to endure judicial examination. The Jibrin case illustrates how excessive suspensions of elected officials contravene basic democratic principles since the Constitution forbids removing legislators from their duties without proper legal authorisation. Based on this judicial decision, the courts will invalidate any legislative suspension lacking clear legal grounds.

5 The Role of Judicial Intervention in Legislative Disciplinary Actions.

Judicial intervention in Nigeria has become a critical factor influencing legislative disciplinary actions and, consequently, shaping the landscape of governance, responsibility and balance of powers within the political system. The role of judicial power in legislation is highlighted by its capacity to interpret laws and judge legislative actions, often leading to a reassessment of the effectiveness of government structures.²⁵⁵ The balance of powers is particularly nuanced. At the same time, legislators are authorised to establish laws, and the judiciary can challenge and verify these laws, thus ensuring alignment with constitutional mandates.²⁵⁶

The implications for governance are profound because judicial intervention often improves legislators' responsibility. The decisions taken by the courts can lead to significant reforms of legislative actions and public administration, leading to a more transparent and responsible government.²⁵⁷ However, this dynamic also raises concerns concerning the potential overcoming of judicial authority, which can distort the balance of powers toward the judiciary, undermining the legislator's role as a leading legal organisation.²⁵⁸ The effectiveness of the judicial system, specifically in disciplinary actions against legislators, underlines the challenges posed by questions such as corruption and failure of governance. This is particularly obvious in cases of money laundering and terrorism financing, where judicial decisions can apply to or hinder

²⁵⁵ Eboh, P. C. 'Examining the Role of the Judiciary in Law Making in Nigeria' (Doctoral dissertation, NILDS-Department of Studies) (2022).

²⁵⁶ Ekeke, A. C. Access to justice and locus standi before Nigerian courts (Doctoral dissertation, University of Pretoria) (2014).

²⁵⁷ Olonisakin, T. T., Ogunleye, A. J., & Adebayo, S. O. 'The Nigeria criminal justice system and its effectiveness in criminal behaviour control: A social-psychological analysis' (2018) 3(6) *International Journal of Accounting Research*, 28-44.

²⁵⁸ Rilwan F. Mahmoud, "An Evaluation of the Judicial Control of Administrative and Legislative Discretion in Nigeria" (2020) 11(1) *NAUJILJ* 149-160.

legislative reforms aimed at combating these crimes.²⁵⁹ In addition, balanced ethical considerations and legal frameworks pose additional complexity in the fight against injustices in Nigeria's political environment.²⁶⁰

The interaction between judicial intervention and legislative actions demonstrates an essential complex relationship to promote a responsible government structure. This interdependence ultimately serves as a mechanism to promote responsibility, highlighting the vital role of power in forming Nigeria's political framework.²⁶¹

6 Comparative Analysis of Disciplinary Procedures for Legislators in the United States and the United Kingdom

Background

Legislative disciplinary measures are essential in preserving institutional transparency and public confidence through accountability and integrity. Jurisdictions demonstrate significant variation in their disciplinary procedures due to differing legal traditions, political cultures, and institutional structures. The Ethics in Government Act of 1978 sets the rules for disciplinary actions against US Congress members, while enforcement is managed through the House Committee on Ethics alongside the Senate Select Committee on Ethics. Ethics committees investigate misconduct cases, including financial offences and abuse of power, and suggest disciplinary measures like censure or removal from office.²⁶² The United Kingdom utilises a system in which the Parliamentary Commissioner for Standards examines complaints against Members of Parliament, with the Committee on Standards managing the process. Inappropriate behaviour may lead to penalties, including suspension from duties, repayment of misused money, or public apologies.²⁶³ Independent oversight bodies demonstrate their essential role in establishing accountability through these systems.

The National Assembly's Standing Orders provide the disciplinary procedures for Nigerian legislators, which the Ethics and Privileges Committee implements. The Nigerian oversight

²⁵⁹ Koehler, M. 'Measuring the impact of non-prosecution and deferred prosecution agreements on foreign corrupt practices act enforcement' (2015) 49 *UCDL Rev*, 497.

²⁶⁰ Chêne, M, 'Indicators of Judicial Efficiency in Corruption Cases' (20 October, 2008) < Indicators of judicial efficiency in corruption cases> 21 March, 2025.

²⁶¹ Transparency International, 'Global Corruption Report: Corruption in Judicial Systems' (2007) <http://www.transparency.org/publications/publications/global_corruption_report/gcr_2007> 21 March 2025.

²⁶² Smith, J. '*Ethics and Accountability in the US Congress*' (New York: Oxford University Press, 2015).

²⁶³ Gay, O., & Leopold, P 'The Regulation of Conduct in Parliament. London: Routledge' (2018) < Conduct Unbecoming: The Regulation of Parliamentary Behaviour: Gay, Oonagh, Leopold, Patricia: 9781842750551: Amazon.com: Books > accessed 21 March 2025.

system operates through internal mechanisms and uses punishments such as suspension from duties, loss of privileges, or complete expulsion. According to critics, the disciplinary mechanism suffers from political manipulation because party allegiances and outside influences control the actions taken.²⁶⁴ The UK and the US uphold more transparent and independent systems with greater external oversight and public accountability. The variations between these systems demonstrate how institutional structures and political environments affect the success of disciplinary actions.

6.1 The United States

The United States has established disciplinary procedures for legislators to address misconduct through its institutional structures and political culture. Legislators' disciplinary procedures in the United States depend on the offence type, political culture, and congressional institutional frameworks. The United States system addresses various forms of misconduct, such as ethical breaches, financial misconduct and criminal actions by public officials. The House Committee on Ethics, alongside the Senate Select Committee on Ethics, serve as the primary investigative body for misconduct allegations. The Ethics in Government Act of 1978 directs these committees to enforce transparency and accountability standards for public officials.²⁶⁵ The seriousness of an investigation and potential penalties depend on the nature of the offence committed. Reprimands generally follow minor ethical violations, but offences such as bribery and fraud can culminate in expulsion or criminal prosecution.

The prevailing political culture significantly influences disciplinary outcomes in the United States. Partisan dynamics often sway the discipline process within Congress because members show hesitation when considering sanctions against fellow party members. According to Thompson, disciplinary measures in the United States Congress have faced criticism because political factors appear to drive them instead of objective justice.²⁶⁶ Representative Michael Myers's expulsion from Congress in 1980 due to bribery charges shows that Congress will act firmly when public pressure intensifies.²⁶⁷ Civil society organisations and media outlets are critical to legislative

²⁶⁴ Aiyede, E.R, 'Governance and Politics of Public Policy in Africa' *Public Policy and Research in Africa* (2022) < (PDF) Governance and Politics of Public Policy in Africa> accessed 21 March 2024.

²⁶⁵ Smith, J. '*Ethics and Accountability in the US Congress*' (New York: Oxford University Press, 2015).

²⁶⁶ Thompson, D.F '*Ethics in Congress: From Individual to Institutional Corruption*' (Washington, D.C.: Brookings Institution Press, 2018).

²⁶⁷ Davidson, R.H., Oleszek, W.J., & Lee, F.E 'Congress and Its Members' (Thousand Oaks, CA: CQ Press, 2020). The expulsion of Representative Michael Myers in 1980 marked a rare instance of Congress taking decisive action against corruption. Myers, a Democrat from Pennsylvania, was implicated in the Abscam scandal, a high-profile FBI

accountability. They reveal misconduct and push for clear transparency standards.

The US Congress establishes institutional frameworks which ensure accountability through due process. The Office of Congressional Ethics (OCE), which operates independently from other bodies, investigates complaints initially and then sends cases to the House Committee on Ethics for continued examination. The dual-layered process guarantees thorough and unbiased investigations.²⁶⁸ The Senate Select Committee on Ethics performs similar duties to other ethics bodies but functions with increased independence. The established systems demonstrate dedication to preserving the integrity of the legislative process and protecting accused members' rights. The intricate nature of these procedures occasionally results in delays that damage public trust in the system. The severity of misconduct determines the type of punishment that the investigative committee findings also influence. The sanctions include private reprimands, public censure, fines, suspension, and expulsion. The expulsion penalty, which is the most serious disciplinary action, demands a two-thirds vote in the proper chamber and applies only to the most serious violations. Representative James Traficant received expulsion from Congress after being convicted of bribery and tax evasion charges in 2002, according to Davidson et al. (2020).²⁶⁹ These penalties' success in preventing misconduct relies on continuous enforcement and Congress's commitment to holding members responsible despite political pressures.

Lessons for Nigeria

1. The Nigerian Legislature can learn valuable insights from the US legislative system, which utilises independent bodies to oversee ethical conduct.
2. Strengthening Independent Oversight Bodies: The US system employs independent organisations such as the Office of Congressional Ethics (OCE) and the House Committee on Ethics to conduct misconduct investigations. Nigeria should establish independent oversight bodies for investigating legislative misconduct to eliminate political bias and external interference.

sting operation that exposed bribery among public officials. Following overwhelming public and media pressure, his expulsion demonstrated Congress's ability to enforce accountability in cases of severe misconduct.

²⁶⁸ Gilmour, J.B., & Halstead, T. 'The Office of Congressional Ethics: A New Model for Accountability' (2016) 131(3) *Political Science Quarterly*, 547–575.

²⁶⁹ Davidson, R.H (n44) 13. Representative James Traficant, an Ohio Democrat, was expelled from Congress in 2002 after being convicted of bribery, racketeering, and tax evasion. His expulsion, only the second since the Civil War, followed a federal trial where he was found guilty of accepting bribes and kickbacks. This case underscored Congress's willingness to enforce accountability for serious criminal conduct.

3. **Transparency and Public Accountability:** The United States system promotes transparency by making investigations and disciplinary actions available to the public. By publishing misconduct reports and sanction outcomes, Nigerian legislative bodies can boost public trust and discourage unethical conduct, as demonstrated in Smith's 2015 analysis.
4. **Clear Legal Frameworks and Due Process:** The United States adheres to established legal standards, including the Ethics in Government Act of 1978, which specifies procedures for dealing with misconduct. Implementing legislation that establishes clear disciplinary procedures would help Nigeria achieve consistent and fair handling of legislative offenses.
5. **Severe Sanctions for Egregious Offenses:** The removal of US representatives Michael Myers and James Traficant underscores the necessity of implementing strict penalties for significant legislative violations. To curb corruption and enhance accountability among legislators, Nigeria should implement harsher measures, including expulsion or criminal prosecution.
6. **Civil Society and Media Engagement:** In the United States, media outlets and civil society organisations are essential forces to reveal governmental misconduct while compelling congressional intervention. Empowering Nigerian civil society organisations and media to oversee legislative actions and demand accountability will help establish transparency and integrity.

6.2 The United Kingdom

The United Kingdom has established disciplinary procedures for its legislators, which depend on the nature of the offence committed and the existing political culture and institutional structures of Parliament. The United Kingdom sets disciplinary procedures for its legislators based on three main factors: the type of offence committed, the political culture surrounding Parliament, and its institutional framework. The UK system handles various misconduct cases, including violations of the Code of Conduct for Members of Parliament (MPs), financial misconduct and interest conflicts. The Parliamentary Commissioner for Standards investigates misconduct allegations, while the Committee on Standards supervises these investigations and suggests disciplinary actions.²⁷⁰ Responses to offences depend on their severity, where minor violations receive informal resolutions, but serious offences like misuse of parliamentary expenses trigger substantial penalties. Despite the UK political culture promoting accountability and transparency,

²⁷⁰ Gay, O., & Leopold, P, 'The Regulation of Conduct in Parliament' (London: Routledge, 2018).

disciplinary decisions remain subject to influence from partisan dynamics. Members of Parliament must maintain superior ethical standards, while public oversight is a key tool in maintaining their responsibility. The 2009 expenses scandal revealed how public pressure can lead to reformative actions and guarantee accountability.²⁷¹ Some observers suggest that disciplinary measures often show leniency towards senior politicians because political structures and party affiliations heavily influence the system. The UK political framework maintains strong systems to handle misconduct while focusing heavily on preserving public confidence.

The UK Parliament has established institutional frameworks that promote impartiality and fairness throughout disciplinary processes. The Independent Parliamentary Standards Authority (IPSA) supervises MPs' financial management, yet the Commissioner for Standards is responsible for investigating Code of Conduct violations. The Committee on Standards, which includes MPs and lay members, examines the PCS investigations and proposes disciplinary measures to the House of Commons.²⁷² The multi-layered investigative approach produces comprehensive and unbiased inquiries, allowing accused MPs to defend themselves. Including lay members in the Committee on Standards boosts public trust by decreasing concerns about political partiality.

The UK imposes different punishments for misconduct based on the severity of the offence and investigative findings. Sanctions include written apologies and repayment of misused funds, parliamentary suspension, and expulsion in the most severe cases. In the 2009 expenses scandal, MPs experienced suspension and forced repayment of wrongly claimed expenses, while others opted for resignation.²⁷³ These punishments aim to prevent misconduct and preserve the integrity of the parliamentary system. The system only functions properly when there is unwavering enforcement and MPs demonstrate the resolve to maintain accountability among their peers despite political challenges.

²⁷¹ Kelso, A, 'Parliamentary Reform at Westminster' (2009) 80(4) *The Political Quarterly* 537–545. The 2009 expenses scandal exposed widespread misuse of parliamentary allowances by UK MPs, sparking public outrage and demands for accountability. The scandal led to significant reforms, including establishing the Independent Parliamentary Standards Authority (IPSA) to oversee MPs' expenses. This case highlighted the power of public pressure in driving transparency and accountability within legislative institutions.

²⁷² Gay, O (n47) 15.

²⁷³ Kelso, A. (n48) 16. The 2009 expenses scandal was a pivotal moment in UK politics, revealing widespread misuse of parliamentary allowances by MPs. Investigations led by the Daily Telegraph exposed claims for personal expenses, including mortgages, furniture, and even duck houses, which were deemed inappropriate or fraudulent. As a result, several MPs faced suspension from Parliament, while others were forced to repay wrongly claimed expenses, often amounting to thousands of pounds. High-profile figures, such as Elliot Morley and David Chaytor, were among those who resigned or faced criminal charges, with some later serving prison sentences for fraud. The scandal damaged public trust and prompted significant reforms, including creating the Independent Parliamentary Standards Authority (IPSA) to ensure greater transparency and accountability in MPs' financial conduct.

Lessons for Nigeria

1. **Establish Independent Oversight Bodies:** Establishing the Independent Parliamentary Standards Authority (IPSA) alongside the Parliamentary Commissioner for Standards (PCS) in the UK shows the value of autonomous organisations in monitoring legislative activities. Establishing independent institutions to investigate misconduct and manage to investigate misconduct and manage legislative expenses would allow Nigeria to reduce political meddling while improving transparency.
2. **Enhance Transparency and Public Accountability:** The UK tackled the 2009 expenses scandal by showing how public influence can lead to institutional changes. To rebuild public trust, Nigerian legislative bodies should implement public financial disclosure and conduct regular audits as accountability measures.
3. **Implement Clear Codes of Conduct:** The UK Code of Conduct for MPs establishes guidelines for appropriate behaviour and penalties for violations. Nigerian authorities can establish and enforce a code that defines ethical guidelines and disciplinary actions to deter legislative misconduct.
4. **Encourage Civil Society and Media Engagement:** Investigative journalism revealed the UK scandal, which demonstrated how media and civil society function to hold legislators accountable. Nigeria must empower media outlets and civil society groups to oversee legislative functions and disclose corrupt practices.
5. **Impose Strict Sanctions for Misconduct:** The UK demonstrated the effectiveness of tough penalties through its response to the expenses scandal by enforcing suspensions and repayments of MPs alongside resignations. Nigeria can implement sanctions such as suspension, fines, or expulsion to prevent misconduct and strengthen accountability.

Below is a comparative table analysing the disciplinary procedures for legislators in Nigeria, the United States, and the United Kingdom based on the parameters used in this analysis:

Nature of Offense, Political Culture, Institutional Structures, and Punishments

Parameter	Nigeria	United States	United Kingdom
Nature of Offense	Financial misconduct, abuse of office, ethical breaches, and criminal acts.	Ethical violations, financial improprieties, abuse of office, and criminal acts.	Breaches of the Code of Conduct, misuse of expenses, and conflicts of interest.

Parameter	Nigeria	United States	United Kingdom
Political Culture	Politicised disciplinary processes are influenced by party loyalty and external pressures.	Partisan dynamics influence outcomes, but public pressure can drive accountability.	Emphasis on transparency and accountability, though senior politicians may receive leniency.
Institutional Structures	The Ethics and Privileges Committee handles investigations internally.	The House Committee on Ethics and Senate Select Committee on Ethics oversee investigations supported by the Office of Congressional Ethics (OCE).	The Parliamentary Commissioner for Standards (PCS) investigates the situation, while the Committee on Standards recommends sanctions. Independent Parliamentary Standards Authority (IPSA) oversees expenses.
Punishments	Suspension, loss of privileges, expulsion (often politicised).	Reprimands, fines, suspension, or expulsion (e.g., Michael Myers in 1980, James Traficant in 2002).	Written apologies, repayment of misused funds, suspension, or expulsion (e.g., 2009 expenses scandal).

Key Observations:

1. Nigeria: Disciplinary processes are often politicised, with internal oversight bodies like the Ethics and Privileges Committee handling investigations. Sanctions include suspension or expulsion, but enforcement is inconsistent due to political interference.²⁷⁴
2. United States: Independent bodies like the OCE and ethics committees ensure impartial investigations. Punishments range from reprimands to expulsion, with high-profile cases like Michael Myers and James Traficant demonstrating accountability under public pressure.²⁷⁵
3. United Kingdom: Transparent and independent bodies like the PCS and IPSA oversee investigations and expenses. Sanctions include repayment of misused funds, suspension, or expulsion, as seen in the 2009 expenses scandal.²⁷⁶

Challenges

²⁷⁴ Aiyede, E.R. 'Legislative Oversight and Accountability in Nigeria: Challenges and Prospects' (2017) 23(2), *Journal of Legislative Studies*, 45–60.

²⁷⁵ Smith, J., *Ethics and Accountability in the US Congress* (New York: Oxford University Press, 2015). See also Davidson, R.H., Oleszek, W.J., & Lee, F.E, *Congress and Its Members* (Thousand Oaks, CA: CQ Press, 2020).

²⁷⁶ Gay, O., & Leopold, P, *The Regulation of Conduct in Parliament* (London: Routledge, 2018).

1. Political Interference and Partisanship: Political loyalties alongside party dynamics frequently determine the actions taken during disciplinary processes. When legislators protect their party members from accountability, it results in uneven rule enforcement and diminishes the trustworthiness of disciplinary systems.²⁷⁷
2. Lack of Independence in Oversight Bodies: Oversight bodies in numerous jurisdictions operate under partial independence as they remain under legislative or executive control. Because they lack complete independence, these oversight bodies encounter difficulty performing unbiased investigations and implementing disciplinary measures.²⁷⁸
3. Weak Legal Frameworks: Disciplinary actions against legislators become difficult when the laws governing their behavior remain unclear or insufficient. The absence of clear guidelines leads to investigations without direction, while sanctions remain inconsistently enforced, according to Smith (2015).
4. Public Perception and Trust: The public frequently approaches disciplinary actions with suspicion, particularly when prominent legislators avoid facing consequences. The public begins to lose trust in legislative institutions because these bodies fail to regulate themselves effectively.²⁷⁹
5. Resource Constraints: The resources available to oversight bodies are insufficient to allow them to conduct complete investigations. The lack of necessary resources delays proceedings while diminishing the effectiveness of disciplinary actions.²⁸⁰
6. Cultural and Institutional Resistance: Several jurisdictions show cultural acceptance of unethical behavior while demonstrating an unwillingness to hold powerful legislators accountable for their actions. Institutional barriers to reform stand in the way of developing strong disciplinary procedures.²⁸¹
7. Complexity of Cases: Cases of misconduct involving corruption or financial crimes present significant complexity, which demands specialised investigative expertise. According to Gilmour and Halstead (2016), complex legal proceedings create challenges for securing convictions and sanctions.

²⁷⁷ Aiyede ER (n51) 18.

²⁷⁸ Gay O & Leopard (n53) 19.

²⁷⁹ Kelso A. (n48) 16.

²⁸⁰ Davidson et al (n52) 19

²⁸¹ Aiyede ER (n51) 18.

8. Fear of Retaliation: Members of oversight bodies and whistleblowers face potential retaliation from influential legislators, which deters them from initiating investigations or reporting misconduct.²⁸²
9. Lack of Transparency: The confidential nature of disciplinary procedures results in less transparency and diminished public accountability. The lack of transparency during disciplinary proceedings generates suspicions about bias and cover-ups.²⁸³
10. Inconsistent Enforcement: Rules enforcement remains unequal because while some legislators receive severe penalties, others manage to evade accountability. This issue undermines the credibility of disciplinary systems.²⁸⁴

7 Conclusion

Legislative disciplinary procedures are critical tools to safeguard institutional integrity while promoting public accountability and trust. The disciplinary procedures in Nigeria, the United States, and the United Kingdom demonstrate significant challenges such as political interference, lack of independence, weak legal frameworks, and inconsistent enforcement. Legislative bodies should focus on creating independent review systems, transparent procedures, and definite legal structures to ensure investigations remain unbiased and punishments are just. Public engagement, media oversight, and civil society participation can build strong disciplinary frameworks that restore public trust. Adopting best practices from other jurisdictions enables legislatures to improve their capacity for member accountability while deterring misconduct and sustaining good governance practices. Effective disciplinary procedures stand as both a representation of institutional integrity and a fundamental element of democratic accountability.

8 Recommendations

1. Amend the Legislative (Houses Powers and Privileges) Act and Senate and House Standing Orders: The Standing Orders need revisions to specify offences and their penalties. Severe penalties, including suspension and expulsion, should be reserved for serious offences like criminal acts and financial mismanagement, while minor violations should lead to reprimands and fines. Disciplinary proceedings will operate consistently and fairly when the regulations are clearly defined.

²⁸² Thompson DF (n43) 13.

²⁸³ Kelso A. (n48) 16.

²⁸⁴ Smith J. (n52) 19.

2. Establish an Independent Oversight Body: Nigeria needs to establish an Independent Legislative Ethics Commission responsible for probing misconduct allegations. The Commission should operate without political interference and have sufficient resources to carry out unbiased investigations, paralleling the Office of Congressional Ethics in the US and the UK's Parliamentary Commissioner for Standards.
3. Enhance Transparency and Public Accountability: The transparency of legislative disciplinary processes needs improvement through the public release of investigation reports and sanctions. The UK's response to the 2009 expenses scandal shows that public reporting of expenses, audits, and misconduct cases rebuilds trust and prevents unethical behaviour.
4. Strengthen Legal Frameworks: Nigeria needs to implement legislation like the Ethics in Government Act of 1978 from the US because this law supplies specific instructions for managing misconduct. The proposed law must set forth detailed procedures for investigations and sanctions while establishing a fair appeals process to prevent ambiguity in disciplinary measures.
5. Promote Civil Society and Media Engagement: Civil society organisations and media outlets must be empowered to oversee legislative procedures and reveal unethical behaviour. Through investigative journalism and public advocacy, Nigeria can establish an accountability culture that mirrors how media in the UK and US monitor legislators.

DEROGATION FROM THE TENETS OF CONSTITUTIONALISM AND RULE OF LAW: THE BANE OF POLITICAL AND ELECTORAL GROWTH IN SUB-SAHARA AFRICA: NIGERIA AS CASE STUDY

Samuel Ugbo*

Abstract

Politics and elections across the globe are propagated and guided by the principles of constitutionalism and the rule of law. This paper interrogates the derogation from constitutionalism and the rule of law in participatory democracy in Nigeria and sub-Saharan Africa. The constitution of the Federal Republic of Nigeria 1999 (as amended), Electoral Act 2022 (as amended), International Laws and treaties and legal instruments constitute the legal framework for politics and elections in Nigeria. This paper found that these laws and instruments are not strictly adhered to by the political actors in Nigeria and sub-Saharan African countries. The doctrinal research methodology was adopted in carrying out this research. It is concluded that the derogation from the laws and rules guiding politics and elections in Nigeria and sub-Saharan Africa has orchestrated bad governance, protracted election litigations and this has made politics uninteresting as it has heralded mediocrity in governance and adversely affected national growth and development. It is suggested that sanctions should be imposed on the persons responsible for the flaws in politics and elections in Nigeria; that the judiciary should rise up to the challenges and uphold the sanctity of the rule of law and constitutionalism; international and non-governmental organizations should wake up to the challenges and effectively re-double their efforts towards monitoring and observing elections; direct primaries, independent candidacy and electronic voting system should be entrenched in the Electoral Act

Keywords: *Constitutionalism, Derogation, Election, Politics, Rule of Law, Nigeria.*

1.0 Introduction

Politics and elections are global phenomena inherent in democratic societies the world over. These phenomena are synonymous in nature as they relate to acquisition of power and governance. Politics is regulated and guided by laws just like elections in every country or state. The constitution of every country stipulates the structure of her political sphere and participation. There are equally enabling Acts of Parliament that help in the regulation and conduct of politics and elections in every country.²⁸⁵ Again, it is a notorious fact that elections and political activities are not only within the sphere of a particular state but it relates to international communities. Consequently, politics and elections across the globe is no longer the domestic affairs of a particular country but a global affair. However, the influence and interference of international

* Ph.D, Lecturer, Department of Private Law, Faculty of Law, University of Delta, Agbor, Delta State, Nigeria, samuel.ugbo@unidel.edu.ng; samlegal2004@gmail.com; Tel: +2348080540346; <https://orcid.org/0009-0004-4997-0486>.

²⁸⁵ Electoral Act 2022.

Communities in the political affairs of a country is worrisome.²⁸⁶ Thus, there are international instruments that help to guide and regulate the conduct of elections in every country especially states that are signatories to such instruments. It follows that politics and elections are subject to the rule of law and not really a porous game without regulations even if it can be regarded as a free for all game. Political actors and stakeholders ought to be bound by the rule of law and every other legal framework that regulates politics and elections. However, in Nigeria and other sub-Saharan African countries, some key political players derogate from the laid down laws or rules and display parochial attitudes and impunity in the political and electoral affairs in order to clinch to power. This deviation from constitutionalism and the rule of law has resulted in series of imbroglio which has bedeviled the political and electoral system in the countries thereby resulting in apathy among the elites and the ordinary citizens and this has heralded mediocrity across the board. In a nutshell, the non-adherence to constitutionalism and rule of law has hampered credible and ideological politics and elections in Nigeria. It is against this backdrop that politics and elections end up in lingering and protracted litigations. In Nigeria, pre and post-election matters flood the Courts and tribunals akin to the fact that politicians in the country do not always heed the provisions of the law. This is an aberration and it has opened the floodgate for election litigations in the country thereby creating an avenue for the courts or tribunals to act as umpires and decide who wins an election in any contest. The nagging problem is that Nigerian politicians do not politick or carry out their political parties' ideologies within the ambit of the law. If the rules are followed and things done in accordance with the provisions of the law in politics and elections, the courts would not be called upon to decide the winner of an election – that is the duty of the electorates who are the determinants of every election. The fulcrum of this paper is to analyze the role of constitutionalism and the rule of law in politics and elections in Nigeria. The purpose of constitutionalism is to limit both government and its institutions on one hand and the citizenry on the other hand.²⁸⁷ If both government and the citizens are limited and everyone submits to the whims and caprices of the law, electoral politics would be propagated peacefully without rancor and acrimony. The constitution is supreme over any other law, and any law that is

²⁸⁶ Lori A. Ringhand, 'Foreign Election Interference: Comparative Approaches to a Global Challenge, 20 (2021) *Election Law Journal* https://digitalcommons.law.uga.edu/fac_artchop/1495 accessed 7 August 2025.

²⁸⁷ Read Helper, Nate Sullivan and Jeffrey Perry, 'What is the Purpose of Constitutionalism?' <https://Study.com/academy/lesson/what-is-constitutionalism-definition-history-concept.html> accessed 7 August 2025.

inconsistent with the constitution is null and void.²⁸⁸ In Nigeria, the Electoral Act guides the conduct of elections.²⁸⁹ Other international instruments that regulate the conduct of politics and elections include the United Nations Universal Declaration on Human Rights (UDHR),²⁹⁰ International Covenant on Civil and Political Rights,²⁹¹ International Convention on the Elimination of all forms of Racial Discrimination against Women, and other instruments. The purpose of these instruments is to ensure that credible, free and fair elections are conducted across the globe and to encourage full participation of the citizenry. The reason remains that political imbroglio and its aftermaths in a particular country go a long way to adversely affecting the international community economically and otherwise.

2. Constitutionalism and the Rule of Law

The activities of government are restricted in order to avoid disorder and tyranny. Every government has a structural base upon which its activities are legally executed. It follows that government's activities are regulated, restricted and guided otherwise, government would become too powerful and its policies would become harsh and unbearable to the citizenry. The meaning of constitutionalism cannot be properly evaluated without venturing into understanding the meaning of constitution itself. Constitution could be said to mean a document or law which 'set out the framework and principal functions of the organs of government within the state, and declares the principles by which those organs operate.'²⁹² It could as well be said to mean the establishment of laws or rules which guides or regulates the activities of government.²⁹³ Constitution has also been defined as 'the fundamental and organic law of a nation or state, establishing the conception, character, and organization of its government as well as prescribing the extent of its sovereignty power and the manner of its exercise.'²⁹⁴ From the foregoing, it is clear that the constitution of a country establishes and regulates the organization and structure of such country's power and sovereignty including political and electoral powers. The purpose of the constitution is to regulate

²⁸⁸ Section. 1(1) and (3) Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as Amended).

²⁸⁹ Electoral Act 2022.

²⁹⁰ Article 21, Section 3 of 1948.

²⁹¹ Article 2(2) ICCPR 1966; see also Article 10 thereof.

²⁹² Desertation upon Parties (1973) cited in K.C. Wheare, *Modern Constitution*, 27; C.J. Okongwu and S. Ugbo, 'Constitutionalism in the Nigerian Democratic Setting' 4(2) (2022) *International Review of Law and Jurisprudence* 25.

²⁹³ Ibid.

²⁹⁴ B.A. Garner, *Black's Law Dictionary* 7thedn. (USA, West Group Publishing Co., 1999) 306.

and guide government, its functionaries and activities in carrying out its functions and responsibilities which must be within the ambit of the constitution and the rule of law. Constitution is written when it is embedded in a document as it is in the Constitution of the Federal Republic of Nigeria 1999 (as altered). It is unwritten when it is not contained in a single document, as it is in the United Kingdom's unwritten constitution. Rigid constitution is very cumbersome to amend,²⁹⁵ while flexible constitution is not always difficult to amend sequel to its flexible nature. On the other hand, constitutionalism is to the effect that government activities should be restricted or limited to the dictates and provisions of the constitution.²⁹⁶ It is more like the practice of the tenets of the constitution. The legitimacy of government rests on its adherence to the provisions of the constitution, therefore, government across the globe yield to the whims and caprices of the constitution and the rule of law and nothing more. When this is done, there would be peace and tranquility, and the people to whom sovereignty belongs would have confidence in government and its activities. It is submitted that non-adherence to constitutionalism results in anarchy and acrimony. The importance of constitutionalism is to examine the legitimacy of government and the activities or policies of the government and its functionaries or agencies. It is also submitted that government and its functionaries must note that there exist a social contract between government and the people, it therefore, behooves on government and the people in authority to ensure that this contract is not in any way violated. If government do, the probable consequence is that the contract becomes a nullity and this would not augur well with the society as it might metamorphous into anarchy or disorder.²⁹⁷

Government is limited in that it must do things and carryout the business of governance within the ambit of the laws, principles and procedures and within the ambit of the law. In Nigeria, the 'End Bad Governance protest' which commenced on the 1st August to 10th August, 2024 was to protest against the bad governance in the country which has orchestrated hardship, poverty and hunger.²⁹⁸ The protesters demanded that President Ahmed Tinubu should do well to bring sanity to the government and the economy which has been bedeviled with corruption and bad governance.

²⁹⁵ Section 9 Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as Amended).

²⁹⁶ (n.5).

²⁹⁷ András Sajó and Renáta Uitz, *The Constitution of Freedom: An Introduction to Legal Constitutionalism* (Oxford University Press 2017).

²⁹⁸ Amnesty, 'Bloody August: Nigerian Government's Violent Crackdown on #EndBadGovernance Protests' <https://reliefweb.int/report/nigeria/bloody-august-nigerian-governments-violent-crackdown-endbadgovernance-protests> accessed 8 August 2025.

Despite the protest, the government although promised to change the narrative, but the situation has remained the same and even worse and undaunted. Constitutionalism therefore, supports the idea that sovereignty belongs to the people; that the constitution is supreme over any other laws; that the three organs of government are allowed to function separately; and that the judiciary possess its independence in order to ensure its sanctity; that the rule of law and the fundamental rights of the citizenry are upheld. Democracy compliments constitutionalism in that democracy restores sovereignty to the people and this enables the people to enforce their fundamental rights.²⁹⁹ When the rights of the people are guaranteed and enforced, and the activities of government are carried out within the confines of the law, it presupposes good governance, democracy, the rule of law and constitutionalism.³⁰⁰

What constitutionalism simply entails is that government and the citizenry must do things in accordance with the law and nothing more. Thus, in *ANNP v Benue state Independent Electoral Commission*,³⁰¹ the Supreme Court of Nigeria held that the Nigerian Constitution is basically on the rule of law, and its tenet is that the scope of government activities must be done within the ambit of the law. It further stated that government must therefore conduct its activities within the ambit of the law. It is within the confines of the constitution to lay the foundation which constitutionalism tend to achieve. Again, the rule of law is to the effect that the law is supreme; everyone is equal before the law; the law ensures the fundamental rights and liberty of the people.³⁰² It presupposes that both government and its functionaries and the citizens are accountable to the law and are not above the law, and they are equal before the law, just as they must ensure the dignity and fundamental rights of the individual.³⁰³ The security agencies must act within the provisions of the law and refrain from demeaning or degrading innocent citizens. It must however, be noted that the rule of law itself and constitutionalism are not absolute as they have some limitations.³⁰⁴ The fundamental rights of individuals are not absolute but have some restrictions. For example, that the citizens have rights to protest does not mean they have right to loot as was witnessed during the ‘End SARS’ and ‘End Bad Governance protests’ in Nigeria in

²⁹⁹ Chap. I, African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act CAP. 10 LFN 2004; See also, Chap. IV CFRN 1999 (as Amended).

³⁰⁰ See, *Akulega v Benue State Civil Service Commission and Anor.* (2001) 12 NWLR (Pt. 728) 524 at 57.

³⁰¹ (2006) 11 NWLR (Pt. 992) 617. S.C.

³⁰² Info@edojudiciary.gov.ng, ‘The Place of the Rule of Law in Democracy’, <https://edojudiciary.gov.ng/wp-content/uploads/2016/10/The-place-of-The-Rule-of-Law-In-Democracy.pdf> accessed 3rd September, 2024.

³⁰³ Chapter IV CFRN 1999 (as Amended). Also, African Charter on Human and Peoples’ Rights.

³⁰⁴ Section 33 (2) a-c CFRN 1999 (as Amended).

2020 and 2024 respectively.³⁰⁵ The fact that the citizens have right to life does not guarantee such citizens to kill another person and refuse to face the penalties.³⁰⁶ That a person has freedom of movement does not guarantee him the right of unrestricted access into the White House in Washington D.C. in the United States of America or the Presidential lodge in Abuja, Nigeria. Freedom of association does not guarantee association with unlawful assemblies or prohibited organizations. It follows that where the right of an individual ends heralds the beginning of another's right. Fundamental rights can therefore, be derogated from for the purposes of defence, safety of the public, public order, morality, public health, and again for the purpose of protecting or enforcing the rights of other persons.³⁰⁷ The court has also held that 'right to personal liberty is limited for illegal aliens'. In *Damisha v Speaker, House of Assembly, Benue State*,³⁰⁸ it was stated that fundamental objectives and derivative principles are not justiciable, however, it is enforceable if an Act of the legislature provides for its enforcement. It must be emphasized that fundamental human rights are rights which stands above the ordinary laws of the land and which is antecedent to the political society. Despite this connotation or coloration, it is submitted that fundamental rights are not absolute as seen above.

3 Politics and Elections in Nigeria

Politics and elections go hand in glove in every society or organization. Politicking heralds elections as there is no election without politics. What this implies is that politics lay foundation for every election be it in a government or any association or organization. Politics is 'the science of the organization and administration of the state; the activity or profession of engaging in political affairs'.³⁰⁹ A political party is described as 'an organization of voters formed to influence the government's conduct and policies by nominating and electing candidates to public office'.³¹⁰ Political power is 'the power vested in a person or body of persons exercising any function of the state; the capacity to influence the activities of the body politic'.³¹¹ From the foregoing, it can safely be said that politics in a state is to acquire power in order to organize and administer the state. Politics involves a contest and this is where elections are conducted democratically within

³⁰⁵ BBC News, 'EndSars Protests', <https://www.bbc.com/news/topics/cezwd6k5k6vt> accessed 8 August 2025.

³⁰⁶ Ibid.

³⁰⁷ *Yetunde Ogunbesan & Ors v Hon. Minister of Health & Social Services* (1995) FHCLR 168 @ 190.

³⁰⁸ (1983) 4 NCLR 625.

³⁰⁹ *EFCC v Reini* (2020) 9 NWLR (Pt. 1730) 489.

³¹⁰ (n.7), 1179.

³¹¹ Ibid

the tenets of constitutionalism and the rule of law. As stated earlier, politics is regulated by laws including the constitution of the land which is supreme over any other law; electoral laws enacted by the legislature or any enabling laws; and some international instruments.

3.1 Historical Perspective of Politics in Nigeria

Historically, after the World War I, it is evidenced that external influences began to penetrate Africa for the purpose of nationalism. The need for self-determination for Africans became very serious and this spurred some Africans in the agitation for self-governance and determination which orchestrated the quest for nationalism among Africans.³¹² The Pan-African Congress was held in Paris between 1918 -1919, and it was convened by Blaise Diagne. The resolution reached in that conference bordering on the right of Africans and their participation in the government of their respective countries. In 1923 and 1927, other conferences were held to foster nationalism in Africa.³¹³ Nationalism is simply the right to participate in the government of one's nation to the exclusion of others; it is all about the interest of a people for self-governance; an ideology centered on the promotion of the interest of a particular people in a nation. Notable Africans, such as Nnamdi Azikiwe of Nigeria and Kwame Nkrumah of the Gold Coast, now Ghana actually brought a wonderful impetus in the nationalism struggle in West Africa.³¹⁴

In 1922, the Nigerian National Democratic Party (NNDP) was formed by Herbert Macaulay in Nigeria, who was described as the doyen of nationalism in Nigeria. NNDP was the pioneer political party in Nigeria. The nationalists' movement heralded the political awareness and the desire for self-governance. It also enhanced the enthronement of independence in Nigeria and many African countries. Before independence, some political parties were founded, and they include: National Council of Nigeria and the Cameroun (NCNC), led by Nnamdi Azikiwe; the Northern Peoples' Congress (NPC), led by Ahmadu Bello; and the Action Group (A.G), led by Obafemi Awolowo. One significant observation about the political parties is that the NCNC was dominated by eastern Nigerians, the NPC had Northern Nigerians as majority of its members, and AG had western Nigerians (Yorubas) as dominant members of the party, thereby showcasing the

³¹² E. Melami, *The Nigerian Constitutional Law*, 3rdedn. (Lagos: Princeton Publishing Co. 2007)102.

³¹³ Ibid.

³¹⁴ Ibid.

ethnic diversity in the politics of Nigeria from the onset. This portrayed the ethnic diversities and the heterogeneous nature of Nigeria politics.

In 1959, elections were held, and it happened that none of the political parties won the majority, and this culminated in an agreement entered into between the NPC and NCNC to form a government. Sequel to this arrangement, Tafawa Balewa became the Prime Minister and Nnamdi Azikiwe, the Governor General. After independence in 1960, Nnamdi Azikiwe emerged as the President while Tafawa Balewa of the NPC emerged the Prime Minister. The NCNC later joined the AG, reasons being that the census exercise was over-blotted in favour of the Northern Nigeria. Another political party known as the United Progressive Grand Alliance (UPGA) led by Obafemi Awolowo was formed. The second republic began in 1979 with a new constitution known as the Constitution of the Federal Republic of Nigeria, 1979. This Constitution adopted the USA's presidential system of government and jettisoned the Westminster system of government which was in existence during the first republic (1960-1966). Prior to the 1979 elections, some political parties were formed. They include: Greater Nigeria's People's Party (GNPP), National Party of Nigeria (NPN), People's Redemption Party (PRP), Nigeria Advanced Party (NAP), Nigeria People's Party (NPP) and Unity Party of Nigeria (UPN). In 1983, Alhaji Shehu Shagari won a controversial presidential election conducted that year, and the military coup d'état by Buhari truncated that republic. The third republic came with the ill-fated political experiment of General IB Babangida, through the Constitution of the Federal Republic of Nigeria, 1989, between 1992 and 1993. And the 4th republic came in consequent upon the drafting of the Constitution of the Federal Republic of Nigeria 1999 (as Amended). New political parties were formed and elections were conducted in 1999, and that election was won by Olusegun Obasanjo of the People's Democratic Party (PDP). In 2007, Umaru Musa Yar'Adua won the presidential election conducted at the expiration of Obasanjo's regime. Mohamadu Buhari succeeded Goodluck Jonathan after the completion of Yar'Adua's regime. In 2023, Bola Ahmed of the All Progressive Congress took over the over the mantle of leadership.

It has been observed that leadership imbroglio has been the bane of Nigeria's political growth. A common attribute of Nigerian politicians is crossing from one political party to another and this has gone a long way to showcasing that politics in Nigeria lacks ideological concept. This attitude is apt to describe the crop of politicians that Nigeria parade. Nigeria is popularly known as the 'giant of Africa', it is expected that as the giant of Africa, she should demonstrate an exemplary

leadership prowess worthy of emulation in sub-Sahara Africa. Thus, in *Abubakar v Yar'Adua*,³¹⁵ the Supreme Court stated that 'politics is not a dirty game ... it is a decent game, only some Nigerians make it dirty'. The apex Court further stated that the problem with Nigeria politics is the gain from it. The Court also suggested that 'politics should be made less attractive'.³¹⁶ It is against this backdrop that so many scholars and stakeholders are clamouring for the restructuring of the entity known as Nigeria so as to give the country a facelift.³¹⁷

3.2 The Role of Political Parties in Nigeria

Every individual has right to peaceful assembly and association. Thus, the constitution of Nigeria provides that:

every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party trade union or any other association for the protection of his interests; provided that the provisions of this section shall not derogate from the powers conferred by this constitution on the Independent National Electoral Commission with respect to political parties to which that commission does not accord recognition.³¹⁸

The same constitution provides that elected officials shall be members of and be sponsored by political parties.³¹⁹ It provides that no association except the political parties shall have powers to canvas for votes for any candidate in any election.³²⁰ And no other association shall function as a political party.³²¹ The constitution also requires the political parties to organize periodical elections for their principal officers and members by democratic means.³²² Again, it provided that the executives and members of a political party should reflect the Federal Character.³²³ The Independent National Electoral Commission (INEC) possesses the power to de-register any political party on the ground that it did not meet any registration requirement; when the political party fails to win at least 25 percent of the votes cast in one state in a presidential election; one local government of the state in a governorship election; one ward in a chairmanship election; one

³¹⁵ (2009) LRCN (vol. 166)1.

³¹⁶ Ibid

³¹⁷ A. Epelle and K. Nweke 'The Challenges of Political Restructuring in Nigeria's Fourth Republic: A Prognosis Analysis' 2019) 152(4) *European Journal of Scientific Research* 370 – 383.

³¹⁸ Section 40 CFRN 1999 (as Amended).

³¹⁹ Ibid, see section 68(1)(g).

³²⁰ Ibid, s. 221.

³²¹ Ibid, s. 222.

³²² Ibid, s. 223 (1)(a).

³²³ Section 14 CFRN.

seat in the National or State House of Assembly election or; one seat in the councillorship election.³²⁴

The Electoral Act³²⁵ is an Act of the National Assembly with the aim of regulating the conduct of Federal, State and Local government elections. It is the responsibility of the political parties to conduct primary elections and submit the list of their candidates to the Electoral Commission not later than 180 days before the date for the general election.³²⁶ A political party may adopt direct, indirect and consensus candidates during its primaries.³²⁷ The Court has held that the conduct of primaries is a domestic affair of a political party. Thus, in *Onuoha v Okafor*,³²⁸ it was held that it is the business of a political party to conduct its primary elections. But where the provisions of the Electoral Act or the constitution are violated it was held in *Ukachukwu v PDP*,³²⁹ that an aspirant can institute an action to challenge the violation of such laws. Where a candidate who participated in a primary election in a political party reasonably believes that the information deposed to in an affidavit by another candidate is false, he can bring an action in a Federal High Court against such candidate.³³⁰ Also, substitution of candidates in a political party can only be made except in the case of death or withdrawal by the candidate. And the political party shall within 14 days of the death of a candidate conduct a fresh election to produce another candidate.³³¹ In *Okolie v Peoples' Democratic Party (PDP) & 2 Ors*,³³² it was held that the whole of section 87 of the 2011 Act, now section 84 of the Electoral Act, 2022 is to guide political parties on how to conduct primaries to select or nominate its candidates. An aspirant has been stated to mean a person who contested in the primaries and he is a candidate in the primaries.³³³ An aspirant was equally defined as 'a person with a strong desire to achieve a position of importance or to win a competition'.³³⁴ An aspirant must participate in the election he contested.³³⁵ The election that brings a candidate is the primary election, which the Court has defined as 'a preliminary election in which a political

³²⁴ Ibid, s. 225A.

³²⁵ Electoral Act, No. 61 of 2022.

³²⁶ Section 29(1) the Electoral Act 2022.

³²⁷ Ibid, section 84(4),(5) and (9)(a).

³²⁸ (1983) 2 SC NLR 244.

³²⁹ (2014) 17 NWLR (Pt. 1435)

³³⁰ Ibid Section 29 (5).

³³¹ Ibid, Section 33.

³³² Unreported Appeal NO.CA/OW/264/2019.

³³³ See *PDP v Sylva* (2012) 13 NWLR (Pt. 1316) 85 @126.

³³⁴ Ibid.

³³⁵ *Eze v PDP & Ors* (2018) LPELR – 441907.

party's voters nominate the candidate who will run in the general election'.³³⁶ Often times, primary elections are not conducted by the political parties. Rather than conduct primaries, the political parties indulge in undemocratic selection of candidates and this has resulted in cancellation of results of primary elections by the Courts. Thus, the Court of Appeal in *People's Democratic Party v Alhaji Ibrahim Ali Amin & Anor*³³⁷ held that:

the point to note here is that if a well-organized congress were held contrary to the assertion of the plaintiffs, there will be a result of the state ward congress showing the three delegates were appointed per ward – the defendant should have presented a result and particulars of the state ward congresses and failure to do so has the consequence that if such a result were available it be contrary to the 1st defendants aversion... that on its own is not capable of proving that there was primaries held in the local government in the absence of ward congresses elections, the point is that if there are no ward congress election where delegates are elected, then invariably you cannot have a state primary election for the party.

All political parties in their various party's constitutions make provisions for failure to exhaust the internal dispute resolution mechanisms of their political parties. This means that all aggrieved party members should first submit themselves to dispute resolution mechanisms of the parties before resort can be made to the Courts or Tribunals. In *Onyeabor Igbo v Anthony Obinna Abili & 2 Ors*,³³⁸ it was held that section 87(9) now Section 84(12) of the Electoral Act 2010 now 2020 (as amended) provides that:

Subsection 9 now (12) Electoral Act 2010, now 2020 (as amended):

Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied... with, in the selection or nomination of a candidates of a political party of election, may apply to the Federal High Court or a State or FCT High Court for redress... By virtue of the above provision, where the complaint of an aspirant is on failure to comply with the Electoral Act,

³³⁶ *All Progress Congress (APC) & Anor v Hon. John Halims Agoda & Anor* (Unreported App. NO. CA/B/124 delivered on 1st April 2019).

³³⁷ Unreported App. CA/K/126/2019 delivered on 18-4-2019.

³³⁸ (2019) LCN/13400 (CA).

Constitution or guidelines of the party, he can always resort to the Court for adjudication.

It follows from the decision of the Court above that the provision embedded in all the political parties' constitutions to the effect that members should utilize the peaceful resolution mechanism within the political parties is subject to the provisions of the constitution and Electoral Act. A person who did not participate in all the stages of an election cannot properly question the Court's order that the Electoral Commission issue a Certificate of Return to the candidate who came second and participated in all stages of the election.³³⁹

In every democratic society, elections are conducted to usher in persons who will take the mantle of leadership. Elections are not only held for the purpose of leadership in government but also in corporations and other organizations. It is simply the process of determining or making a choice of persons that can be in a position of authority. It is normally executed or perfected by means of vote. The Black's Law Dictionary defines election as:

The exercise of a choice; especially, the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies... the doctrine by which a person is compelled to choose between accepting a benefit under a legal instrument or retaining some property right to which the person is already entitled; an obligation imposed on a party to choose between alternative rights or claims...³⁴⁰

Elections are at best the manifestations of, or at worst attempts to uphold the practice of human rights.³⁴¹ As stated earlier, elections are guided by the laws of the land and international laws and instruments. These instruments seek to institutionalize and probably internationalize the standards in elections across the globe. But would this be possible going by the principle of sovereignty of a state? The naked truth is that the infraction resulting from elections in one country adversely affect other countries one way or the other. Overall, elections are no longer the sole business of a particular country but that of the globe.

³³⁹ See, *Haruna Bello v APC & Ors* (2019) NLPER – 47777(CA).

³⁴⁰ *Ibid*, (n.21).

³⁴¹ Compendium of International Standards for Elections' (2nd edn Elanders Graphic Systems AB (Sweden) 2007). Publication of the European Commission cited in O.P. Okonkwo, 'Over a Decade of Uninterrupted Periodic Elections in Nigeria: Challenges in Complying with International Standards' (2017) *Juriscop, Ebonyi State Journal of Law*, 151.

4. The Role of International Communities in Elections

This article has stated earlier that sovereignty belongs to the people through the constitution where government and the citizenry derive all powers, rights and authority.³⁴² It is further provided that the participation by the people in their government shall be ensured in accordance with the provisions of the constitution.³⁴³ Notwithstanding these provisions of the constitution, there are international election standards which are regarded as universal principles and guidelines to promote genuine democratic election processes the world over. These standards emanated from protocols, declarations, treaties, and other international instruments which protect democracy and the rights of the citizens. The standards do not compel any country to adopt any laws or process in elections, but what it seeks to achieve is to establish and entrench a standard in every election in order to achieve credible, free and fair elections. One may wonder why a sovereign state should adhere to an international standard in the conduct of the state's election having regard to the state's constitution and electoral laws. It is submitted that the world has turned a global village, as stated earlier, any political crises in one country adversely affects another economically and otherwise. It therefore, follows that elections in every country be monitored and observed for the purpose of ensuring that certain international standards are upheld and guaranteed.

The United Nations (UN) Universal Declaration of Human Rights³⁴⁴ provides that 'the will of the people shall be the basis of the authority of government'. It follows that elections must be held by means of secret ballot. The International Covenant on Civil and Political Rights (ICCPR) stated that 'every citizen must be given the opportunity without discrimination on the ground of gender, race, sex, language, to vote during elections'.³⁴⁵ The right to have interest and participate in public affairs by voting in elections is guaranteed as fundamental right.³⁴⁶ The UN Covenants and Declarations to protect and promote the rights of marginalized peoples; Inter-governmental bodies in Africa, Asia, Europe, Middle East and others, made provisions on the standard of elections. Such standards include free participation of the electorates; information about the contestants; provision for secret ballot during voting; reasonable legal framework or standards; freedom of

³⁴² Section 14(1) CFRN 1999 (as Amended).

³⁴³ Ibid, 14(1)(c).

³⁴⁴ Article 21 1948.

³⁴⁵ ICCPR 1966.

³⁴⁶ UN General Comment 25 on ICCPR, Article 25.

association by contestants; campaigns and interface between the contestants and the electorates; protection of the media; adequate security to protect voters.³⁴⁷

The UN Security Council; International Covenant on Civil and Political Rights 1966; Convention on the Rights of Persons with Disabilities, 2006; Convention Against Corruption 2003, African Charter on Democracy; Elections and Governance, Economic Community of West African States Protocol on Democracy and Good Governance 2001; and other international and regional organizations, have made provisions for election standards in order to ensure peaceful, free, fair and credible elections. Despite the intervention of all these organizations and legal instruments, elections in various parts of the world especially in sub-Sahara Africa and Nigeria in particular is bedeviled with acrimony and rancor devoid of standards, and this is why such elections ends in Court and tribunals. In Nigeria, almost all elections are challenged in courts or tribunals. The reason behind this is that the laws governing elections are not complied with during elections. Elections in Nigeria and sub-Saharan Africa is marred with corrupt practices and irregularities such as rigging, vote buying and selling, snatching and stuffing of ballot boxes and high scaled corruption within the electoral body. The problem is both individual and institutional. The people in authority exhibit impunity and undermine the laws in order to clinch to power at all cost. This is a nagging issue that has befallen Nigeria and it has gone deep into the fabrics of Nigerians and Africans who believe that the purpose of being in power is to amass wealth for their generations yet unborn. This line of reasoning by the political class is archaic, demonic and very inimical to socio-economic and national development. The desperation for power and the conduct of political parties during primary elections, selection of unpopular candidates purportedly loyal and related to the well to do citizens in the polity has led to apathy and eroded confidence in the political system of the country thereby breeding mediocrity in the polity.

5.0 Conclusion

This paper has adumbrated the tenets of constitutionalism and the rule of law as it affects politics and elections in Nigeria and sub-Saharan Africa. Constitutionalism and the rule of law tend to pursue similar goal and objectives. What the two phenomena seek to achieve in principle is that every activities of government and the citizenry should be within the ambit and confines of the law and nothing more. It is submitted that politics and elections in Nigeria and sub-Sahara Africa are not propagated within the confines and ambit of constitutionalism and the rule of law.

³⁴⁷ National Democratic Institute, 'Applying International Election Standards' www.ndi.org accessed 20 June 2025.

Consequently, the resultant effect is that it has led to a dastard and adverse political and electoral aftermaths in sub-Sahara Africa. The will of the people which ought to be the basis of the authority of government, by the expression of sovereignty in periodic and genuine elections through a universal and equal suffrage held in a secret ballot is eroded and this make politics and elections in Nigeria and sub-Sahara Africa uninteresting and breeds apathy among the elites. What is obtainable is a situation where a set of gangsters engage in occupational fraud and profiteering towards amassing wealth for their children, cronies and family members to the detriment of the people. The latest categories of persons who have taken over the political space are fraudsters, otherwise known as ‘yahoo boys’ and drug traffickers who have illegally and fraudulently amassed wealth and decides to hide under the canopy of politics. One wonders how this crop of persons can be productive in governance. For all intent and purpose, politics is not geared toward money making venture from government but it is for the purpose of governance and service to humanity. It is concluded that there is the need to abide by the tenets of the rule of law, constitutionalism and the rules of engagement as it relates to politics and elections in Nigeria and sub-Sahara Africa in order to sustain participatory democracy and achieve political and socio-economic advancement otherwise, the country would remain in socio-political doldrums and trauma. The military coups in Burkina Faso, Chad, Gabon, Guinea, Mali, Niger and Sudan, in recent time, could be attributed to poor governance and unacceptable politics and aftermath of massively rigged elections in those countries.³⁴⁸ The ‘End SARS Protest,’ ‘End Bad Governance Protest’ and the call for military take-over in Nigeria was a result of bad governance which has occasioned socio-political and economic problems in Nigeria and the aftermaths of all these are hunger and poverty in the land. Unfortunately, nothing has changed even after the protests as the economy remains in shambles. There is no gainsaying the fact that there is no perfect politics and elections in any part of the universe but suffice to state categorically that politics and elections must be propagated in accordance with the rule of law and constitutionalism in order to reflect the will of the people.

6. Recommendations

Having stated all these, justice would not be said to have been done to this discourse if no recommendations are made. The following recommendations are therefore, made and it is hoped

³⁴⁸ Redation Africa News, ‘Africa: The 7 Military Coups over the Last Three Years’, <https://www.africanews.com/2023/08/30/africa-the-7-Military-Coups-over-the-last-three-years/> accessed 1 September 2024.

that these recommendations would help in taming political and election pitfalls in Nigeria and sub-Sahara Africa. It is recommended thus: a special Election Marshall should be established to apprehend those who perpetrate fraud and rigging during elections; there shall be established a special Court or tribunal across the states of the federation of Nigeria to try electoral offenders; the judges in such Court(s) must be persons of proven integrity in the society. Second, international and local non-governmental organizations should endeavor to set up monitoring and observation teams to monitor and observe elections in Nigeria and should be able to make their reports public within a reasonable time. Third, sanctions should be imposed on persons and countries who are signatories to treaties that do not adhere to such treaties and legal instruments concerning politics and elections in those countries. Fourth, the judiciary must rise to the challenge and ensure that the sanctity of the rule of law and constitutionalism is upheld when called upon to do justice in political and electoral matters; the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act 2022 (as amended) should be further amended to provide for independent candidacy in every elections in Nigeria; section 84 of the Electoral Act 2022 (as amended) should be further amended to read that all primary elections should be by direct primaries only; political parties that contravene this provision shall be made to pay a fine of fifty million naira and such elections should be nullified. Fifth, electronics voting system should be adopted in all the elections and results transmitted from various units to collation centers; stiff penalties should be meted at any security officer and members of the electoral body found culpable of electoral malpractices; and the INEC should be empowered to organize local government elections across the country.

ASSESSING THE IMPACT OF MIGRATION ON NIGERIA'S SOCIO-ECONOMIC GROWTH

Uju Obuka*

Abstract

The failure of governance in Nigeria in recent times has manifested in persistent insecurity, high inflation, poor socio-economic performance, unemployment, hardship, suffering, poverty, low development, and frustrated hope. As of today the level of poverty, unemployment, and inflation in Nigeria has skyrocketed to an extent that an average man can hardly afford one square meal a day. These precarious conditions in Nigeria have led to a massive migration of both trained and untrained professionals, such as academics, doctors, nurses, engineers, builders, and even students, to developed countries in search of greener pastures. This has far reaching implications for a developing economy like Nigeria. This paper therefore appraises the impact of migration on Nigeria's socio-economic growth. The paper finds that security, economic and political conditions in Nigeria have ignited the urge for people to migrate in search of better living conditions and safety. The paper argues that if these factors are not tackled, that the country will be plunged into dearth of experts in all human endeavours. The paper relies on doctrinal methodology, and where necessary, reference to the position in other jurisdictions will be relied on. The paper concludes by calling on the Nigerian government to expedient efforts in tackling insecurity in the country, formulate and implement good economic policies that will revamp the economy, create more job opportunities and improve the social amenities available to the common man.

Keywords: Migration, impact, socio-economic development, assessment, Nigeria

1.0 Introduction

Nigeria is a middle-income, mixed economy and emerging market, with expanding financial services, communications, and entertainment sectors.³⁴⁹ Although much has been made of its status as a major exporter of oil, Nigeria produces only about 2.7% of the world's supply.³⁵⁰ Despite the place of the petroleum sector in the the growth of the country's GDP, it has remained a small sect of the country's overall vibrant and diversified economy. The previously well-established subsistence agricultural sector has not kept pace with the rapid population growth, and Nigeria, once a large net exporter of food, now imports a large quantity of its food products.³⁵¹ The past few years has seen an increasingly decline in the production and exportation of oil by Nigeria. Notwithstanding Nigeria's substantial endowment of fossil fuel resources, the economy has struggled to translate this wealth into broad-based development, with approximately 70% of

* Uju Obuka, Ph. D, LL.M, LL. B (Hons) B.L, Senior Lecturer, Faculty of Law, University of Nigeria, Nsukka, email: uju.obuka@unn.edu.ng. Phone: 08033280467.

³⁴⁹ Olusegun Ojo, 'The impact of immigration on Nigerian Economy' www.papers.ssrn.com. Accessed March 12 2025.

³⁵⁰ Ibid.

³⁵¹ Ibid.

the population still living in abject penury. A scenario which economists have referred to as an anomaly. Thus, this irony where abundant natural resources exist concurrently with pervasive deprivation is commonly referred to by economists as the “resource curse”. Within the Nigerian context, "resource curse" refers to a situation whereby an abundance of natural resources fosters official corruption and incites violent competition among citizens for control of those resources. This represents the position in Nigeria where abundant natural resources co-exist with abject poverty on the part of the citizenry. Consequently, these precarious conditions in Nigeria have led to massive migration of both trained and untrained professional like academics, doctors, nurses, engineers, builders and even students to developed countries.³⁵²

The migration of professionals, skilled workers and high-level manpower from developing to the developed countries began at the middle of the 20th century. Brain drains in Nigeria became prominent as from the 1960s due to poor working conditions such as poor infrastructural system, inadequate social amenities, the devalued national currency, decreasing standard of education and irresistible corruption in public sectors, general insecurity till date to mention a few.³⁵³ The above-mentioned factors that propelled brain drain in Nigeria in the early 60s have quadrupled since the return of democratic rule in Nigeria. Migration remains a salient socio-economic phenomenon influencing developmental trajectories across the globe. In Nigeria, migration manifests in complex internal and international dimensions, with implications for human capital, economic development, demographic distribution, urban planning, and remittance flows. This paper therefore examines the multifaceted impact of migration on Nigeria’s socio-economic growth. It explores both the positive and negative implications, drawing from empirical studies, government reports, and international databases. The paper is divided into five parts. Part one is the general introduction and it gives an insight into the subject matter. Part two deals with the historical context of migration in Nigeria. Part three focuses on the root causes or drivers of migration in Nigeria. Part four deals with the positive and negative socio-economic impact of migration on Nigeria. Part five concludes the work and recommends the adoption of policy framework, and strategies that will curtail the negative impacts of migration on the economy of Nigeria.

³⁵² Ibid.

³⁵³ AA Afolayan, GO Ikwuyatun, & O Abejide, ‘Dynamics of international migration in Nigeria: A review literature’, (2008) www.researchgate.net. Accessed January 15 2025.

2.0 Historical Context of Migration in Nigeria

Migration broadly may be defined as the movement of people from one place to another, often across administrative or political boundaries, either for employment or residence. Migration, simply defined, involves the movement of people from one location to another in a country or from one country to another for the purpose of establishing a new residence.³⁵⁴ Although the definition of migration varies from different perspectives, there is a consensus that it involves the movement of people across a recognized political boundary to establish permanent or semi-permanent residence.³⁵⁵ The period of residence also varies, but most experts believe that six months of residence in a new location is enough to categorize one as a migrant.³⁵⁶

From time immemorial, humans have consistently involved themselves in movement activities in search of the basic necessities of life. Therefore, migration can be traced as far back as the existence of man, most especially when man desired to go in search of food during various famine seasons.³⁵⁷ The search for greener pastures could be regarded as the major driver of migration in early times. Migration is a feature of social and economic life across many countries, but the profile of migrant populations varies considerably.³⁵⁸ Migration can be internal or international. Internal migration is the movement of individuals within same geographical territory which in this case can be from rural to urban or from capital of a country to rural settlement while, international migration has to do with any person who changes his or her country of usual residence for either of various reasons.³⁵⁹ Thus, international migration includes movement of many kinds, such as people leaving their countries of origin for economic reasons, to join their families abroad or as refugees.³⁶⁰ By the same token, an internal migrant includes an internally displaced person, a trader who relocated his or her business to another part of the country, a transferred civil servant or a citizen of a country on deployment for national engagement, like a Nigerian university

³⁵⁴ International Organization of Migration, 'Migration and development in Nigeria' (2009). Thematic Document

³⁵⁵ Eberechukwu Faith Obani and Boris Happy Odalonu, 'Impact of Rising Migration on Socio-Economic Development of Nigeria' (2015-2022)' 10(1) (2023) *African Journal of Humanities & Contemporary Education Research*, 39.

³⁵⁶ Ibid.

³⁵⁷ Ibid.

³⁵⁸ Organization for Economic Cooperation and Development (OECD) Database on Immigrants in OECD Countries, www.oecd.org. Accessed March 12 2025.

³⁵⁹ Eberechukwu Faith Obani and Boris Happy Odalonu (n 7).

³⁶⁰ Ibid.

graduate who is deployed by the National Youth Service Corps (NYSC) to serve the nation in another location or state of the federation.³⁶¹

The rising phases of globalization have contributed to influencing the tradition and culture of international migration in our immediate world, and this globalization which has unfolded itself in different phases has raised alarm of great benefits and an opportunity around the globe which is propelling Africans to be on the move.³⁶² These benefits range from job opportunities, international education certifications, inter-connectedness, international relations between countries creating avenue for interdependence most especially in the aspect of manpower.³⁶³ Therefore, as there exist differences in people's desire, it significantly explains part of the variation in the rate of migration. However, prospect for a better life certainly is one of the most important push factors behind people's decision to migrate.³⁶⁴

In Nigeria, high levels of unemployment, migrant remittances, population growth, unstable politics, ethno-religious conflicts and poverty are the major factors promoting the massive movement of both men and women across and outside the country.³⁶⁵ Poor economic conditions and high level of poverty also force people to move as they search for better living conditions, especially the youths and young adults.³⁶⁶ The existence of inequalities between rural and urban areas in Nigeria in terms of access to economic resources and development also promotes both internal and international migration.³⁶⁷

Migration in most cases does not only empower the migrant, but is also known for its relationship with the geographical and occupational mobility of labour, as the probability of moving within

³⁶¹ BA Oyeniyi, 'Internal Migration in Nigeria: A Positive Contribution to Human Development' (2013) Research Report ACPOBS/2013/PUB01, commissioned by African, Caribbean and Pacific (ACP) Group of States and funded by the EU.

³⁶² OO Fayomi, 'The Diasporas and Nigeria-Ghana Relations' (1979-2010): Ph.D thesis, www.eprints.covenantuniversity.edu.ng, accessed 5 March 2025.

³⁶³ Ibid.

³⁶⁴ Ibid.

³⁶⁵ SA Darkwah, & V Nahanga, 'Determinants of international migration: The Nigerian Experience' 62(2) (2014) *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 321-327; A Adepoju, 'Migration management in West Africa within the context of ECOWAS Protocol on Free Movement of Persons and the Common Approach on Migration: Challenges and Prospects' in M Tremolieres (ed): *Operationalizing the ECOWAS Protocol on Free Movement of Persons*, (2009) 161-174.

³⁶⁶ S Bezu & H Stein, 'Are Rural Youth in Ethiopia Abandoning Agriculture?' *World Development* 64(2) (2014) 259-272.

³⁶⁷ H Ghebru, A Mulubrhan, M George & O Adebayo, 'Role of Land Access in Youth Migration and Youth Employment Decisions: Empirical Evidence from Rural Nigeria' (2018). (No. 58). Washington, DC: International Food Policy Research Institute (IFPRI).

occupations is often higher with migration.³⁶⁸ The recent wave of Nigerians relocating out of the country represents the largest movement of people out of the country since the end of the civil war, over fifty years ago.³⁶⁹ Migration trend in Nigeria has remained constant. As the economic reality in the country gets tougher, it is likely that many more people will flee the country in the next coming years.

2.1 Migration Trends in Nigeria

Migration in Nigeria has deep historical antecedents transcending colonial rule to the present generation. Pre-colonial patterns were predominantly influenced by trade, conflicts, and kinship. Labour migrations orchestrated by infrastructural projects and administrative demands characterized colonial migration. Post-independence, migration patterns have emerged with urbanisation, industrialisation, and, much more recently, globalisation. Large-scale rural-urban migration, resulting in the expansion of cities like Lagos, Kano, and Port Harcourt were the aftermath of the oil boom of the 1970s. The recent international migration particularly to Europe, North America, and other African countries were as a result of the economic downturns and political instability of the 1980s onwards. Migration in Nigeria is not a recent phenomenon; it has evolved over centuries, shaped by environmental, political, economic, and socio-cultural forces. The historical trajectory of migration in Nigeria can be examined across four broad periods: pre-colonial, colonial, post-independence, and modern day migration pattern.

2.1.1 Pre-Colonial Migration Pattern

The search for fertile land, trade opportunities, conflicts, and environmental factors were predominantly the major factors that propelled pre-colonial migration in Nigeria. Various ethnic groups moved within the territory now known as Nigeria for purposes ranging from agriculture and pastoralism to conquest and commerce. For instance the Tivs and the Ibibios were known for agricultural migrations, while the Fulanis engaged in seasonal transhumance across the savannah belt, practicing mobile pastoralism to adapt to climatic variability. In the north, cities like Kano and Zaria became commercial hubs due to their strategic positioning as trans-Saharan trade route. The Inter-ethnic wars and the expansionist policies of powerful empires such as the Oyo, Benin, and Sokoto Caliphate resulted in the displacement and resettlement of populations. In this era

³⁶⁸ Ibid.

³⁶⁹ Eberechukwu Faith Obani and Boris Happy Odalonu (n 7).

therefore, migration was often fluid and adaptive, with communities integrating and coexisting despite ethnic and cultural differences.

2.1.2 Colonial Era Migration Pattern

The colonization of Nigeria by Britain introduced more structured and economically-driven migration patterns. For instance, the establishment of cash crop economies and infrastructural projects like ports and railways created demand for labour especially in southern Nigeria. This necessitated the recruitment of migrant workers from rural areas to serve as labourers in cocoa plantations in the west and coal mines in Enugu. Again, the creation of colonial administrative centres in Lagos, Ibadan, Kaduna and Enugu attracted internal migrants seeking employment in civil service and trade. Equally, colonial educational policies led to migration by individuals seeking missionary or government-sponsored schooling, often across ethnic or regional lines. It is clear from the foregoing paragraph that colonial migration patterns gave birth to the modern day urbanization, regional labour flows and educational mobility.

2.1.3 Post Independence Migration Pattern

The Political, economic and social transformations following the 1960 independence led to astronomical increase in internal and international migration in Nigeria. The Nigerian Civil war caused internal displacement especially amongst the Igbos of the southeast. The post-war period saw a reconfiguration of settlement patterns, and regional tensions that continued to affect migration dynamics. The oil boom of the 1970s led to a rapid economic growth and a surge in rural to urban migration. Commercial cities like Lagos, Aba, Port Harcourt, and Warri experienced unprecedented growth driven by the concentration of oil wealth and job opportunities. This period also marked the beginning of significant emigration of Nigerians to Europe, USA, and other neighbouring West African countries like Cameroon and Ghana.

A new wave of emigration was triggered in Nigeria by the collapse of oil prices in the early 1980s, coupled with the worsened living conditions orchestrated by mismanagement and corruption, economic downturn, the introduction of Structural Adjustment Programs (SAPs) by the IMF and World Bank. This period saw the mass exodus of professional doctors, engineers, academics, and students who left Nigeria in large numbers seeking better opportunities abroad; a phenomenon

later termed “brain drain.” Even within Africa, many Nigerians sought work in neighbouring countries even though xenophobic backlash complicated regional mobility.

2.1.4 Modern Day Migration Pattern

Insecurity, demographic pressures, and socio-political instability have intensified internal and international migration in and out of Nigeria since the beginning of the 21st century. A notable feature of the recent years is the ‘Japa Syndrome’ wherein a large percentage of the teeming population of Nigerians are leaving the country in their numbers. Insecurity, poor job prospects and governance failures have led to mass emigration of Nigerian youths particularly skilled workers to Europe, Australia, UK, America, Canada etc in search of greener pastures. This movement is not peculiar to Nigeria as other third world countries have similar problems.

Armed conflict (especially the Boko Haram insurgency), farmer-herder clashes, and banditry have displaced millions of people internally in Nigeria. Nigeria faces one of Africa’s largest internal displacement crises. Conflict from Boko Haram insurgency, banditry in the northwest, and herder-farmer clashes in the Middle Belt have displaced over 3 million people.³⁷⁰ As of 2023, the National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI)³⁷¹ reported over 3 million internally displaced persons (IDPs). Internally displaced populations face precarious living conditions and limited access to employment, healthcare, and education. Most of these internally displaced persons migrate to other states in search of food, security and shelter. Furthermore, climate change and environmental degradation particularly desertification in the North, erosion in the southeast and flooding in the Niger Delta have added new layers to Nigeria’s migration story. The loss of fertile land due to drought, overgrazing, deforestation, and climate change in the north force people to leave the affected states to other states in search of better economic opportunities. The erosion in the southeast, flooding in the Niger Delta often leads to loss of homes and farmlands, environmental degradation, uninhabitable living conditions forcing communities to relocate to urban centers thereby causing urban overcrowding. The much more recent kidnappings in the southeast, southwest and other states have equally forced a lot of people to flee from the rural communities to the urban centers. These ecological stresses force

³⁷⁰ See the Internal Displacement Monitoring Centre (IDMC) Report 2023, www.internal-displacement.org. Accessed April 6 2025.

³⁷¹ See the National Commission for Refugees, Migrants and Internally Displaced Persons Report 2023, www.ncfrmi.gov.ng. Accessed April 4 2025.

populations to move to cities, contributing to unplanned urban sprawl.³⁷² It is clear from the above that migration in Nigeria has historically reflected a complex interplay of environmental, economic, social, and political forces. Understanding this history is crucial to assessing how migration has shaped, and continues to shape, Nigeria's socio-economic development.

3.0 Underlying Drivers of Migration in Nigeria

Migration could be voluntary or involuntary depending on the situation under which the migrant left. Migration is voluntary when a citizen of a nation or state willingly leaves his country or state of origin to another country or state in search of better living conditions. Under involuntary migration, the person has no intention to migrate but was forced to do so by circumstances around him.³⁷³

In Nigeria, there are certain factors fueling voluntary migration which has never been seen since independence. These factors include the desire for better career opportunities, heightened insecurity in the country, the need to provide a better future for one's children, the requirement of further education, and poor governance in the country.³⁷⁴ Uneven development, unstable political systems, availability and affordability of modern communication media and transportation system have raised the pressure on migration and supply-driven migration movement.³⁷⁵ Secondly, demographic and economic developments within European nations themselves have produced new demand-driven movements into some European nations, and as a result, the facts of immigration are to some extent the same but the perception is not the same everywhere.³⁷⁶

Lee³⁷⁷ grouped factors causing migration into two segments, and called them push and pull factors. The push factors are usually those conditions/situations which are discomforting to a person within the environment in which he/she resides, while the pull factors are conditions/situations which lure an individual to other environments.³⁷⁸ The push factors include insufficient job

³⁷² O.R Ugwoke, & O.C. Chukwu, 'Climate Change and Environmental Migration in Nigeria' 23(1) (2021) *Journal of Sustainable Development in Africa*, 1–16.

³⁷³ S Bell, S Alves, E S De Oliveira, & A Zuin, 'Migration and land use change in Europe: A review; 4 (2010) *Living Reviews in Landscape Research*, 2–49.

³⁷⁴ Eberechukwu Faith Obani and Boris Happy Odalonu (n 7).

³⁷⁵ Ibid.

³⁷⁶ Ibid.

³⁷⁷ ES Lee, 'A Theory of Migration' 3(1) (1966) *Demography*, 47–57.

³⁷⁸ Ibid.

opportunities, unsafe environment, poor crop harvest, insufficient rainfall, desertification, flooding, persecution, slavery, natural disaster, death threats, poverty and war.³⁷⁹

Evidently, Nigeria has abundant and varied resources which portray it as a rich nation, but these resources are mismanaged, pushing the inhabitants to extreme poverty. As the poverty is biting hard and the population is increasing, the people seek for various strategies to survive. One of such strategies is migration, an age-old strategy for human survival.³⁸⁰ On the other hand, the pull factors are those attractive conditions in other countries that lure or entice people to move over to those other countries. They include better job opportunities, higher wages, more wealth, better services, attractive climate, safer/less crime, political stability, security, better crop yields and less rate of natural disasters.³⁸¹

3.1 The Push Factors

High rate of unemployment, low wage, devaluation of the naira, and poverty remain the major push factors fueling migration in Nigeria. Despite being Africa's largest economy by GDP, more than 40% of Nigerians live below the poverty line with youth unemployment surpassing 35% in some regions.³⁸² Economic policies are often influenced by political interests rather than national development. It is unarguable that these economic realities push individuals especially the youths to seek better livelihoods abroad.

Another propelling push factor in Nigeria is political instability and governance failure. The political climate of Nigeria is a major driver of international migration, especially among the young, skilled and disillusioned citizenry. Young people often feel that they have no voice or say in the governance of the country which reinforces their desire to leave the country. The belief that western countries offer fairer systems and stronger protections fuels international migration. Again, political instability undermines investor's confidence in a country, leading to fewer jobs and shrinking economic opportunities. The implication being that fewer employment opportunities are available for the youths.

³⁷⁹ Ibid.

³⁸⁰ Obani and Odalonu (n 7).

³⁸¹ BN Nanzip, 'Migration: Meaning, types, causes, effects and economic importance of migration' www.jotscroll.com. accessed March 26 2025.

³⁸² See National Bureau of Statistics (NBS) (2021). *Poverty and Inequality Report*. Abuja: NBS.

Corruption has been linked to governance failure and undoubtedly a push factor for migration. Nigeria consistently ranks high on global corruption index.³⁸³ This has forced many Nigerians especially professionals to leave the country in search of countries with more stable political environment and transparent system. Insecurity and armed conflict are also push factors driving migration. Nigeria has witnessed series of armed conflict and insurgency in the last two decades. The violent activities of Boko Haram and other extremist groups in the north have led to the internal displacement of over 2.5 million people.³⁸⁴ Many people lost their lives in the conflict, communities and farmlands destroyed, and many areas ungovernable. Equally, the escalation in the clashes between herders and farmers in the middle-belt and some states in the north have resulted in internal migration and food insecurity.³⁸⁵ Armed banditry and kidnappings in so many states in Nigeria have also intensified insecurity-related migration. All these internal crises have increased the number of internal and international migrations.

Demographic growth is another push factor fueling migration in Nigeria. Nigeria's high population which has been estimated to 237.5 million,³⁸⁶ intensifies migration pressures. Although Nigeria is blessed with rich human and natural resources, the rate of graduates being turned out yearly and pushed into the labour market far outweighs the available jobs. The high population in the country invariably exerts pressure on the labour market, infrastructure and public services with the implication that a large percentage of the graduates cannot be assimilated into the workforce.

3.2 The Pull Factors

The factors which will lure individuals to leave their countries of origin or state can be summarily classified into better living conditions. The desire for better job opportunities, higher wages, more wealth, better services, attractive climate, safer/less crime, political stability, security often propel people to migrate. Migration for educational purposes often leading to settlement abroad has become common in Nigeria. It is a common knowledge that most of the people who migrate through the educational route use that as the quickest route to gaining permanent residency. The vast majority of Nigerians that migrated recently through educational route only did so to secure

³⁸³ See Transparency International Corruption Perceptions Index 2024, www.transparency.org. Accessed April 10 2025.

³⁸⁴ See Internal Displacement Monitoring Centre (n 22).

³⁸⁵ International Crisis Group (ICG). (2021) *Ending Nigeria's Herder-Farmer Crisis*. Africa Report No. 302.

³⁸⁶ See Worldometer 2025 World- Population, www.worldometers.info. Accessed March 27 2025.

visa for themselves and their immediate families, and to secure post-study work visa on graduation.

Professionals who migrate through the skilled worker route are attracted by the availability of better job opportunities, higher wages and other job prospects. Many professionals in Nigeria earn salaries that do not match the cost of living or global industry standards. The high inflation, low wages and unstable currency make it difficult for professional to build wealth or financial security. Besides, the chronic lack of resources, tools, infrastructure and support often frustrates professionals in fields like medicine, engineering, education and research. Poor career progression equally frustrate professionals and force them to seek better environments. An examination of the foregoing reveals that people migrate to saner climes to seek better economic opportunities, safety, education and improved living conditions. The impact on the economy and social well-being of its people is enormous and is the subject of the next discussion.

4.0 The Socio- Economic Landscape of Nigeria

Socio-economic growth according to Todaro and Smith³⁸⁷ refers to the process by which a nation improves the economic, political, and social well-being of its people. It can also refer to the progressive and sustained improvement in the living standards, employment opportunities, income levels, and equitable distribution of resources among the people of a society.³⁸⁸ Socio-economic growth therefore, is the improvement in the economic and social conditions of a country. It encompasses increases in income, employment, literacy rates, life expectancy, and overall human development.

Growth is not solely determined by GDP but by the quality of life and the equitable distribution of opportunities. Socio-economic development is the parameter for determining the respect accorded to any nation in the international sphere. This invariably means that all sectors that make up the government must be effective. Thus, there is socio-economic growth or development in any nation when there is meaningful improvement in the nation's economy and most especially the comfortable standard of living of her citizens. The development of a nation is manifest in the living standards of her citizens.³⁸⁹ Development is also evident in a nation when there are varieties and opportunities present for the citizens such as in products, health care facilities, education,

³⁸⁷ MP Todaro and SC Smith, *Economic Development* 10th edn (London: Pearson Education Ltd, 2009) 265.

³⁸⁸ See JK Olayemi, 'A Survey of Approaches to Poverty Alleviation', A paper presented at the National Workshop on Integration of Poverty Alleviation Strategies into Plans and Programs in Nigeria Ibadan: Nigeria 1995.

³⁸⁹ BA Adah, & UD Abasilin, 'Development and its challenges in Nigeria: A theoretical discourse' www.covenantuniversity.edu.ng, accessed March 13 2025.

housing among other thinkable choice that fits into the political, economic, social and environmental areas of the nation.

The increased productivity through effective labour force is also an evidence of development in that specific nation.³⁹⁰ Thus, Socio-economic development explains the affordable lifestyles as well as the suitable living standards of individuals in that society.³⁹¹ Socio-economic development in a nation cuts across improvements in various areas of the state, which includes the educational system, employment, social amenities provisions among other areas. Socio-economic development is associated with positive transformation in a state's economy.³⁹² Using the above indices to assess Nigeria, it is clear that Nigeria has not attained the height it is expected to attain due to mismanagement of resources and her low productive status. In the area of provision of basic amenities like clean water, electricity, healthcare, education, and housing, notwithstanding the recognition of these rights by the constitution as a function of government,³⁹³ their classification as non-justiciable social and economic rights has made it difficult for the citizens to legally compel the government to provide these amenities to them. The implication is that government at all levels in Nigeria fail to provide these amenities to the citizens with impunity. Again, despite the efforts made by the various administrations in introducing policies aimed at improving access to basic amenities, their implementation remains weak due to corruption, mismanagement, poor planning and inadequate funding.³⁹⁴ The socio-economic status of Nigeria is therefore faulty with many issues which can be related to mismanagement, corruption, and poor policy framework. The deficiencies of the various institutions in Nigerian are responsible for her unworthy socio-economic status.³⁹⁵ These deficiencies therefore, have far-reaching implications for her socio-economic growth.

390 A Oladiran, 'Security Challenge and Development in Nigeria: Leadership to the Rescue' 1(1) (2014) *International Journal of Academic Research in Public Policy and Governance*, 50-59.

391 Eberechukwu Faith Obani and Boris Happy Odaonu (n 7).

392 Ibid.

393 See for instance s 16(1) that states that the state shall control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen. See also s 17(3) (d) which obliges the state to direct its policy towards ensuring that there are adequate medical and health facilities for all persons and equal and adequate educational opportunities at all levels.

394 See for instance the Rural Electrification Projects, National Water Supply and Sanitation Policy, Basic Health Care Provisions Fund, the National Social Investment Programmes (NSIP), and the National Development Plans eg the Vision 2020, Economic Recovery and Growth Plan, and the National Poverty Reduction and Growth Strategy.

395 Ibid.

4.2 Impact of Migration on Socio-economic Growth of Nigeria

The economic crisis in Nigeria has led to various massive emigrations of individuals into other countries in search of greener pastures. These experiences have made Nigeria more of emigration nation-state than a nation-state of destination as it has been known to be.³⁹⁶ Migration can have a range of social, cultural, political and economic effects. It involves transfer of know-how and skills, financial assets (including remittances), and the transfer of people from one location to another. Migration also has consequences for the individual, the area of origin and the area of destination on the family, household, society, the economy and development as a whole.³⁹⁷

Migration has far-reaching effects on Nigeria's socio-economic landscape, influencing various sectors including labour, education, healthcare, and national income. On the positive side, migration contributes to economic growth through remittances. Diaspora remittances are critical sources of foreign exchange. The central Bank of Nigeria reports³⁹⁸ that Nigeria received over 4.22 billion dollar in remittance in 2024, a substantial growth of 61.1% from the 2.62 billion dollar recorded in the same period in 2023 surpassing oil revenues in some quarters. These funds support household consumption, education, healthcare and small business investment.

Another positive impact of migration is diaspora investments, and transfer of skills, and knowledge. Nigerians in diaspora are investing in real estate, education, fin-tech and agriculture back home. This has the tendency to promote home country development. It also contributes to cultural exchange and advocacy. Similarly, international migration reduces labour market pressures at home. Nigerians in diaspora often support extended families indirectly reducing domestic dependency ratio. It can also reduce domestic unemployment and foster global networks. The effect of internal and international migration is not limited to positive impact. It also involves a wide range of negative effects ranging from developmental issues, governance and legal protection, employment and social protection, health services and education, tertiary education, knowledge and skills development, economic growth, financial services and growth, agriculture and rural infrastructural development, and environment issues. All these could be grouped under migration and human development. Nigeria government could not guarantee the safety of her citizens and provide needed basic needs of survival, this paved way for increased or mass exodus

³⁹⁶ Obani and Odalonu (n 7).

³⁹⁷ Ibid.

³⁹⁸ CBN Report, April 9 2025, www.cbn.gov.ng. Accessed May 2 2025.s

of Nigerian citizens. Talking about the negative impact of poor economic policies of Nigeria fueling migration, the World Bank³⁹⁹ reports that:

In 2018, 40 percent of Nigerians (83 million people) lived below the poverty line, while another 25 percent (53 million) were vulnerable, and with Nigeria's population growth continuing to outpace poverty reduction, the number of Nigerians living in extreme poverty was set to rise by 7.7 million between 2019 and 2024. While the economy was projected to grow at an average of 3.2 percent in 2022-2024, the growth outlook is subject to downside risks including further declines in oil production and heightened insecurity.⁴⁰⁰ Meanwhile, continued scarcity of foreign exchange and tighter liquidity could affect the economic activity in the non-oil sector and undermine the overall macroeconomic stability. The uncertainty is also expected to be accompanied by high inflation and continued fiscal and debt pressures. Since 2021, the fiscal deficit narrowed to 4.8 percent of GDP in 2021 from 5.4 percent in 2020, due to a modest uptick in revenues, and was financed by borrowing. Public debt stood at \$95.8 billion in 2021, or about 22.5 percent of GDP. Annual average inflation stood at 17.0 percent in 2021 against 13.2 percent the previous year and above the central bank's 6–9 percent target. Inflation was fueled by food price rises at the start of the year and exchange rate pass-through.

Equally, speaking about the constituents of an economically vibrant nation, Obi⁴⁰¹ has opined that:

to become an economically productive nation, the first thing government needs to do is to invest in education, human infrastructure and capacity development. The more educated the people, the better the economy, which in the long run helps national development. Human development should be prioritized before physical infrastructure because human capital is too low in Nigeria. Education is an important element of human development, and investment in education is regarded as the best form of human capital development. The 129 universities, plus other tertiary institutions, in Nigeria have not met the demand for tertiary education in the country. Thus, a large number of Nigerians migrate yearly in search of university education. Nigeria government has not taken education seriously which prevent healthy competition in international arena.

Another negative impact of migration on the socio-economic development of Nigeria is the increase in the number of students migrating from the country to study abroad. The world system has witnessed an astronomical increase in the number of students who have decided to study outside their home countries. By this decision, they become international students. International students have increased in number from 2.1 million in 2001 to over 6.4- 6.9 million between 2022 and 2023 academic year.⁴⁰² Apart from the increase in the enrolment rate of international students,

³⁹⁹ World Bank (2022, September 14). 'The World in Africa; Overview' .

⁴⁰⁰ Ibid.

⁴⁰¹ P Obi, 'Why Nigerian's economy is not doing well? *Vanguard Newspaper* May 22, 2022.

⁴⁰² Institute of International Education, 2024, www.iie.org. Accessed March 12 2025.

there is also the emergence of large numbers of new host countries that are educationally attractive to international students. Their emergence has come to challenge the traditional big five educationally attractive host countries in the areas of students' subscription and destination choice. These big five according to Kell & Vogl⁴⁰³ are the United States of America, France, United Kingdom, Australia and Germany. Significant changes have occurred in students' migration trends and patterns over some time.⁴⁰⁴ These changes are brought about by policies and strategies that are put in place by some countries to attract higher international subscription.

The policies adopted by these institutions such as jobs and career incentives, scholarship/tuition waiver and introduction of courses to be delivered in English language have given a boost to international students' enrollment in the emerging big players in higher education. This enabling environment created by the developed countries lured citizens from developing countries to migrate thereby resulting in loss of revenue which would have accrued to their home countries.⁴⁰⁵ Most of the Nigerian public funds and resources used for Nigerian students in terms of scholarships are now little or no investments as these individuals find it unnecessary and a sort of punishment to return back to Nigeria after their studies, as they believe they can be worth more than what Nigeria really has to offer. Such an action undermined economic development and loss of technical manpower in various sectors of Nigerian economy.⁴⁰⁶

Another negative impact of migration on the socio-economic growth of Nigeria is brain drain. Brain drain occurs when significant numbers of highly skilled nationals leave their countries of origin to seek employment or establish businesses abroad. According to Idio,⁴⁰⁷ Nigeria lost over 10,000 academics that would have developed the Nigerian educational system to its maximum. This event was traced back to the Babaginda administration between 1986 and 1990. The administration brought about the drastic emigration of skilled individuals out of the nation state due to the obvious and perceived push factors of international migration at that time. It was revealed that while the developed industrial countries see the benefits of strengthening her labour force through immigration of qualified individuals from the developing nation-states (known as

⁴⁰³ P Kell, & G Vogl, (eds) 'Transnational student mobility: Introducing new paradigms for researching international students, in *International students in the Asia Pacific. Education in the Asia-Pacific region: Issues, concerns and prospects* (Dordrecht: Springer, 2012) 1-24.

⁴⁰⁴ Institute of International Education (n 54).

⁴⁰⁵ Obani and Odalonu (n 7).

⁴⁰⁶ Ibid.

⁴⁰⁷ EE Idio, W Rogers & PA Akadi, 'The impact of international migration on socio-economic development of Nigeria' (8) (2015) *GOJAMSS*, 32-35.

source nation-states) in which Nigerians are not excluded, the developing countries suffer drastic shortage of qualified skilled individuals in the work force as a result of this there is low turnout of productivity.⁴⁰⁸

In the field of medicine, according to the Senior Medical Officer of the British General Medical Council,⁴⁰⁹ between 2015 and July 2021, a total of 4,528 Nigeria-trained medical doctors have moved to the United Kingdom to practice. The figure is aside from the number of Nigerian doctors who were trained in the UK and are practicing there.⁴¹⁰ This number has skyrocketed to about 11,000 in 2023.⁴¹¹ Fayomi⁴¹² asserts that Nigeria's inability to develop is traced to the loss of manpower as well as the appropriate skill and expertise to develop the economy. Revealing that when a nation state's labour force grows with the needed and quality skill there is bound to be productivity obviously experienced in the nation state. But in a situation whereby skilled Nigerians engage in emigration from the nation-state the reverse is said to be the case. Similarly, Idio⁴¹³ posits that one of the negative effects of international migration (emigration) on Nigeria is reduction of already low -quality skilled manpower. It is undoubtable that brain drain has a negative effect on the economies of developing countries, because the skills of the remaining nationals are not sufficient to grow industries, academia and other sectors of the economy. Also, brain waste occurs when skilled migrants engage in menial occupations abroad, resulting in deskilling.⁴¹⁴

When the youths are empowered and contribute their quota, the economy will bounce back. The exodus of Nigerian youths who are at the productive age for economic development is a setback to socio-economic development of Nigeria.⁴¹⁵ Furthermore, internal and international migration lead to social disruption in the families. Family separation, absentee parenting, and cultural disintegration are common issues arising from migration. Migration creates big vacuum in families and oftentimes result in strain in the relationship between couples. The young ones are mostly affected as they are sometimes stuck with one of the parents who struggle to fill the gap in parenting.

⁴⁰⁸ Ibid.

⁴⁰⁹ Report of the Senior Medical Officer of the British Medical Council, www.britishmedicalcouncil. Accessed March 20 2025.

⁴¹⁰ D Tolu-Kolawole, 4,528 'Nigerian Doctors moved to UK in six years' Punch Newspaper August 12th 2021.

⁴¹¹ See Punch Newspapers Report of 18th March 2025, www.punchng.com. Accessed March 25 2025.

⁴¹² OO Fayomi (n 14).

⁴¹³ Idio (n 55).

⁴¹⁴ Ibid.

⁴¹⁵ Obani and Odalonu (n 7).

Migration no doubt leads to cultural disintegration as the migrants overtime begin to lose the cultural values, norms, beliefs, institutions, and practices that they imbibed from their communities. As young people migrate from rural areas, traditional languages, customs, and social obligations are often lost, resulting in diminished sense of communal identity. The adoption of foreign and conflicting values by international migrants sometimes leads to complete disconnection from their cultural roots or heritage. The foregoing discourse has shown that migration has a multifaceted impact on Nigeria's socio-economic development. On the one hand, it has fostered transnational linkages that benefit education, healthcare, and entrepreneurship, eased unemployment pressures, and facilitated the inflow of remittances. On the other side of the divide, it has resulted in significant brain drain, urban overcrowding, pressure on infrastructure and public services, cultural disintegration, and social disruption. These mixed outcomes highlight that while migration can serve as a catalyst for socio-economic transformation, its benefits are not automatic or evenly distributed.

6. Conclusion and Recommendations

Migration has remained a powerful factor shaping Nigeria's socio-economic growth. Understandably, it has served as both a coping strategy for individuals facing economic hardship and insecurity, and at the same time as a conduit pipe for national growth through remittances, diaspora investment, and global exchange of skills and ideas. The benefits notwithstanding, migration has posed a lot of challenges to the development of the economy of Nigeria. The loss of skilled professionals to international labour markets, the pressure on national infrastructure, the depopulation of the rural communities, and the social fragmentation caused by displacement all highlight the adverse effects of migration. These challenges underscore the need for Nigeria to adopt a more strategic and inclusive approach to migration that will in addition to harnessing its developmental potentials, will also mitigate its negative consequences.

For Nigeria to drastically discourage her citizens from moving out of the country, the following measures and recommendations should be adopted in order to discourage Nigerians from migrating in large numbers to other countries for better opportunities and living conditions.

Firstly, Nigerian Government should solve the problems or issues that make people migrate. This could be done by proportionately translating the country's economic growth to developmental projects, such as providing infrastructural facilities, ensuring security of lives and properties, providing better jobs and equal chances to the youths. Secondly, government should strive to

reform the academic curricula to be more technical and vocational so that on graduation, the graduates can be self-reliant. Again, government should create partnerships between educational providers and industries to encourage job placement of graduates. Furthermore, government should expedient efforts in tackling persistent insecurity confronting the nation. Again, government at all levels should create more job opportunities and improve the environment to stop people from migrating. Finally, good economic policies geared towards development and empowerment of youths should be formulated and implemented to revamp the Nigeria economy to compete with developed world.

THE BURDEN OF PROOF OF NON-COMPLIANCE AND THE SUBSTANTIALITY RULE IN ELECTORAL CONTESTS IN NIGERIA AND THE USA

Charles Azubuike Obodozie*

Abstract

A petitioner in an election petition has the burden of proof of non-compliance, but such non-compliance must also be shown to have substantially affected the result of the election. This burden of proof is very difficult to discharge as decided cases have shown. Electoral jurisprudence is often founded on the presumption of regularity of election results as declared by the electoral umpire, which implies that the law takes for granted that a credible election has been conducted. This tends to lend judicial validity to the view that challenging the outcome of an election through the legal process is an exercise in futility. The consequence of this undue judicial protection of the declared winner and the electoral umpire to the detriment of the petitioner is that legal justice has scarcely redressed electoral injustice. This rebuttable presumption of the regularity of elections and results no longer serves the ends of justice in our electoral process. The purpose of electoral laws is to obtain a correct expression of the intent of the voters. This paper seeks to show that the presumption of regularity and the application of the substantiality rule is herculean, unreasonable and unfair, and proposes a departure to a lower standard. It recommends reforms that enhance electoral justice by using video evidence to prove the signing of election results like form EC8A by party agents, automatic electronic transmission of results and a review of the substantiality rule so that proved cases of fundamental non-compliance should vitiate the results of the election.

Keywords: *Burden of Proof, Election, Petition, Non-Compliance, Substantiality Rule.*

1. Introduction

Elections in Nigeria are essentially a struggle for power to determine who would control the wealth of the country, by the politicians who are mostly corrupt, and who have no other means of livelihood other than politics and its financial benefits. It has therefore become literally a fight for survival, and a fight to the death. Those who win political power become rich and famous overnight, while those who lose it become poor and forgotten. So, politicians do everything to win power, and even more to retain it. As President Obasanjo once described it,

* LL.B (Hons) B.L. is a practicing lawyer, and the Principal Partner in Obodozie Law Firm, Onitsha. Phone: 08033816026. Email: charlesobodozie@gmail.com.

elections in Nigeria are a do or die affair. This struggle for power has often led to civil crisis, military coups, and even a civil war. Politicians, with the connivance of INEC, have always failed to comply with the relevant electoral laws in their bid to win elections by all means. However, the courts and tribunals do not only require proof non-compliance, but also proof that the non-compliance complained of substantially affected the result of the election, which is a difficult burden and sometimes an impossible task.

The 2022 Electoral Act sought to lighten the burden by bringing in technology for accreditation using BVAS and electronic transmission of results. It also tried to remove the need to call oral evidence where the non-compliance is manifest on the face of the document. But the recent cases of *Oyetola v. INEC*,⁴¹⁶ *Atiku v. INEC*⁴¹⁷, and *Obi v. INEC*⁴¹⁸ made mincemeat of the whole reforms as the election tribunals again took refuge in the presumption of regularity, which placed an onerous burden of the proof of non-compliance on the petitioners, and also the substantiality rule, to dismiss most of the petitions. A study of the judgments in these cases would reveal that the decks were stacked against the petitioners and there was no way they could have got justice under the prevailing regime of the burden of proof.

2.0. Burden of Proof in Election Petition in Nigeria

On whom lies the burden of proof in an election petition in Nigeria? By virtue of section 131(1) of the Evidence Act, 2011, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. The burden of proof in election petition cases, just like in other civil cases is on the person questioning the results of an election to prove his claim. In *Ngige v. INEC*,⁴¹⁹ the court held that there is a rebuttable presumption that any election result declared by a returning officer is correct and the burden of rebutting that presumption is on the person who denies its correctness. However this burden shifts from side to side, and at each time in the case, rests on the party whose case would fail if no further evidence is led in the case. See *Awuse v Odili*.⁴²⁰

⁴¹⁶ (2023) 11 NWLR 71

⁴¹⁷ (2023) 19 NWLR 711 - 760

⁴¹⁸ (2023) 19 NWLR 761 - 1652

⁴¹⁹ (2015) 1 NWLR (Pt. 1440) 281

⁴²⁰ (2015) 1 NWLR (Pt. 1440) 281

2.1. Burden to prove that election took place

The person who asserts that election took place i.e. the respondent has the onus placed on him to prove that fact. When a petitioner makes the usual submission and allegation of fact that elections did not in fact hold, and as such the declaration of the respondent as winner was unconstitutional, the respondent usually responds with assertions of fact that elections actually held which he achieves by the presentation of the result with the official seal and stamp of the electoral official. It therefore behooves on the respondent to prove by evidence that elections actually held especially when the petitioner has made out a prima facie case.

2.2. Burden to Prove a Claim for a Declaration that the Petitioner Won the Election

In an election petition, where, by the pleadings of a party without more, he claims for a declaratory relief, it cannot be deemed to have been established even where it was admitted by the adverse party. For example where in an election petition the petitioner alleged that the Respondent, who was declared as the winner and returned elected in the questioned election, did not score a majority of the lawful votes cast at the said election but rather that it was the petitioner that scored majority of the lawful voted cast and should be declared as the winner of the said election. He must prove that he polled the majority of the votes cast, and won the election.

3.0. The Burden of Proof of Non-Compliance in Nigeria

3.1. Section 134 (1)(b) of the Electoral Act, is that a petitioner may question the validity of an election on the ground of corrupt practices or non-compliance with the Electoral Act. This article shall however focus on the second limb of Section 134 (1)(b), which is that the election was invalid due to non-compliance with the Electoral Act. Non-compliance is a term of very wide significance and embraces all violations of the Electoral Act or the regulations which affect the validity of an election or the return but does not include corrupt practices.⁴²¹

Where there is an interplay of facts which go to establish corrupt practices with other cases of non-compliance, an election tribunal or court reserves the power, at the trial, to separate the constituent offenses of corrupt practices from cases of non-compliance and consider either case

⁴²¹ See *Goyol v INEC* (2011) 2 LRECN 420; *Buhari v Obasanjo* (SC), [2005] All FWLR (Pt 273) 1.

separately, so as not to confuse the standard of proof for corrupt practices with the standard of proof required to establish cases of non-compliance. See *Omisore v Aragbesola*.⁴²²

Non-compliance with the Electoral Act covers such things as outright violation of the Act and regulations made under the Act, proven manipulation of the electoral process to confer on one or more candidates undue advantage to the detriment of others, and other forms of malpractices or irregularities, such as over-voting or other material allegations that voters were disenfranchised through the use of illegal or manipulated voters' registers, failure or neglect to provide voting materials or absence of designated polling stations.⁴²³ But it does not include non-compliance with directive or instructions of the Commission or its officials. See *INEC v Oshiomole*.⁴²⁴

3.2. Non-compliance and the burden of Proof in Nigeria

The onus is on a petitioner challenging the validity of an election on the ground of non-compliance with the Electoral Act and guidelines issued by the Commission for the conduct of the election to establish his case by credible evidence. In discharging this onus, the petitioner is required to rebut the presumption in favour of the correctness of the result of the election declared by the Commission.⁴²⁵ In *Udom v Umana*⁴²⁶ the Supreme Court held that this presumption is not rebuttable by mere presumptuous postulations or rhetorical questions but only by cogent, credible and acceptable evidence. In the absence of any credible evidence to rebut this presumption, an election petition predicated on this ground will surely fail.

In order to obtain the nullification of any election on this ground, the petitioner has to prove first, the particular breaches or infractions of the Electoral Act, and second, that the non-compliance substantially affected the result of the election.⁴²⁷ According to section 135 (1) of the Electoral Act 2022, as amended:

“An election shall not be liable to be invalidated if it appears to the tribunal that the election was conducted substantially in accordance with the principle of the Act and that non-compliance did not affect substantially the result of the election.”

⁴²² [2015] 15 NWLR (Pt 1482) 205.

⁴²³ See *Fannami v Bukar* [2004] FWLR (Pt 198) 1210; *Imah v Malarina* (1999) 3 NWLR (Pt 596) 545.

⁴²⁴ (2008) 3 LREC 649 at 705

⁴²⁵ *Nwole v Iwuegbu & Ors* (2005) 16 NWLR (Pt 952) 543; *Onye v Kema* (1999) 4 NWLR (Pt 598) 198

⁴²⁶ [2016] 12 NWLR (Pt 1526) 179 at 227-228, paras. H-D.

⁴²⁷ *Okechukwu v INEC* [2014] 17 NWLR (Pt 1436) 255; *Omisore v Aragbesola* [2015] 15 NWLR (Pt 1482) 205.

The burden on the petitioner to prove non-compliance is three-fold. In *Waziri v Geidam &*,⁴²⁸ the court held that for the petitioners to succeed in their allegation of non-compliance, they must first, plead in their petition the kind of non-compliance alleged. Clear and precise pleading is necessary to sustain the evidence in proof of such allegations. Second, they must tender cogent and compelling evidence to prove that such non-compliance took place in the election. Third, that the non-compliance substantially affected the result of the election, to the detriment of the petitioner.

In *Isiaka v Amosun*,⁴²⁹ the alleged evidence of non-compliance affected only 12 polling units out of 1672 polling units that were being contested. This was held to be insufficient to negatively affect the election and the return of the 1st respondent. In *Lanto v Wiwo*,⁴³⁰ it was found after a painstaking evaluation of the evidence that the petitioner was only deprived, by a human error, of 2 (two) votes as demonstrated. It was accepted by the election tribunal and all parties that if the two votes were added to the total votes won by the appellant it would not change the result of the election. The Court of Appeal therefore held that the appellant had failed to satisfy that the votes denied him, by mistake, prevented him from getting majority votes in his favour, and for that reason, the appeal must fail. However, the Court of Appeal stressed the point that if two (2) votes would have changed the result of the election, certainly the election would have been vitiated and election voided on that score.

To be able to overturn the result of an election, the petitioner has a duty to prove the alleged non-compliance polling unit by polling unit, ward by ward. The Supreme Court held in *Ladoja v Ajimobi*,⁴³¹ that a petitioner, who complains of non-compliance with the electoral process in specific polling units, has the onus to present evidence from eye witnesses at the various polling units who can testify directly in proof of the alleged non-compliance. See also *Gundiri v Nyako*.⁴³²

A petitioner may call a polling agent, a ward supervisor assigned to the polling units by his political party, or even the polling agent or ward supervisor of his opponents, where they have useful evidence that will assist his case.⁴³³ He may even rely on police officers or officials of the

⁴²⁸ [1999] 7 NWLR (Pt 630) 227 CA.

⁴²⁹ [2016] 9 NWLR (Pt 1518) 417 at 441 – 442, paras. F-A.

⁴³⁰ [1999] 7 NWLR (Pt 610) 227 CA

⁴³¹ [2016] 10 NWLR (Pt 1519) 87 at 136, paras. A-B

⁴³² (n 134)

⁴³³ *Okechukwu v INEC* [2014] 17 NWLR (1436) 255; *Sijuade v Oyewole* [2012] 11 NWLR (Pt 1311) 280 at 299

Commission such as the Presiding Officers, and Polling Staff, where they have useful and direct evidence that will assist him in proving his case.⁴³⁴

In *INEC v Oshiomole*,⁴³⁵ to establish his case, the petitioner subpoenaed two (2) officials of the Commission, one of whom was the Head of Operations in the State Office of the Commission. He testified as PW47 and tendered results of polling units, all statutory forms for collation of the result of the governorship election in the twelve (12) Local Government Areas in contention. He also produced bags of ballots cast in the election which were counted on the orders of the election tribunal in open court. The election tribunal believed the evidence of PW47, and the avalanche of documentary evidence tendered and other witnesses called by the petitioner. Consequently, it was held that the petitioners had proved their case on the preponderance of evidence before the tribunal. Where the non-compliance comprises of mere infractions of the Electoral Act, which do not amount to electoral offences, the standard of proof shall be on the balance of probabilities, as in all civil cases. It was held in *INEC v Oshiomhole*⁴³⁶ that the standard of required of a petitioner to prove non-compliance which does not involve any crime is on the preponderance of credible evidence before the election tribunal. All the petitioner needs to establish is that his story is more likely to be true than the respondent's.

3.3. Section 137 Electoral Act 2022: No need for oral evidence when non-compliance is manifest

Section 137 of the Electoral Act 2022 provides that:

"It shall not be necessary for a party who alleges non-compliance with the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance."

However, the above provision has not absolved a petitioner of the need to lead credible evidence to prove non-compliance. It only provides that oral evidence may not be necessary if and only if the originals or certified true copies of the documents tendered manifestly disclose the non-compliance. Otherwise oral evidence is necessary to demonstrate the documents, and tie them to the non-compliance. In *Oyetola v INEC*⁴³⁷ the Court held as follows:

⁴³⁴ See *Ibrahim v Ogunleye & Ors.* [2012] 1 NWLR (Pt 1282) 489.

⁴³⁵ (n 9)

⁴³⁶ *ibid*

⁴³⁷ (n 1)

"Section 137 of the Electoral Act only applies where the non-compliance alleged is manifest from the originals or certified true copies of documents relied on. In the instant case, neither Exhibit BVR nor any other documents relied on by the Appellants remotely disclosed, non-compliance with the provisions of the Electoral Act. Hence the section cannot be of any assistance to them. In the circumstance, they still had a duty to call witnesses who witnessed the alleged acts of non-compliance to testify."

3.4.Only a practice which is contrary to the electoral act can be a ground to question an election

A pertinent point to note is that By Section 134(2) of the Electoral Act, 2022, only an act or omission which is contrary to the Electoral Act, 2022 can be a ground for questioning an election. Thus, complaints relating to non-compliance with provisions of the Regulations and Guidelines or the Manual of Election Officials are not legally cognizable complaints for questioning an election. In *Nyesom v Peterside*,⁴³⁸ the Supreme Court held as follows:

"While the Electoral Commission is duly conferred with powers to issue regulations, guidelines or manuals for the smooth conduct of elections, so long as an act or omission regarding such regulations or guidelines is not contrary to the provisions of the Act itself, it shall not of itself be a ground for questioning the election."

3.5.Nature of the INEC Result Viewing (IREV) Portal and whether the unavailability of election results on the IREV portal can be a ground to nullify an election

IREV is not a collation system. The Supreme Court, in *Oyetola v INEC*⁴³⁹ made it clear that there is a difference between a collation system and the IREV portal though both are part of the election process. Whereas the collation system is made up of the centres where results are collated at various stages of the election, the INEC Result Viewing Portal is to give the public the opportunity to view the polling unit results on election day.

What this means is that where the IREV portal fails, it does not stop the collation of results which up to the last election was manually done. The failure or malfunctioning of the IREV only

⁴³⁸ (2016) 66 NSCQR (Pt 3) 1325; see also *Jegade v INEC* (2021) LPELR-55481(SC) at 25– 26 at paras. A – D.

⁴³⁹ (n 1)

deprives the public and even election administrators and monitors the opportunity of viewing the portal and comparing the result collated with the ones transmitted into the IREV.

The Regulations and Guidelines and the INEC Manual stipulated to the effect that hard copies of election results shall be used for collation exercise. Thus, it's only when no such hardcopies of the election results are in existence, that electronically transmitted results or results from the IREV should be used to collate results. By virtue of Paragraph 91(1) of the Regulations, the Forms EC8A and EC60E constitute the bedrock nay "the building blocks" for any collation of results.

In *Atiku v. INEC*,⁴⁴⁰ the Supreme Court held that the electronic transmission of results of an election is not expressly stated anywhere in the Electoral Act, but was only introduced by INEC in its Regulations and Guidelines, 2022, and in the INEC Manual for Election Officials, 2023, and that by Section 134(2) of the Electoral Act, 2022, only an act or omission which is contrary to the Electoral Act, 2022 can be a ground for questioning an election.

3.6. Non-compliance and the Substantiality Rule

In addition to proving that the alleged acts or omissions of non-compliance occurred, the onus is on the petitioner to prove that the alleged non-compliance affected the final result of the election to his detriment, he has a duty to prove to the election tribunal or court that the non-compliance affected *substantially the result of the election*.⁴⁴¹

Where the court, based on the strength and quality of evidence from the petitioner, comes to the conclusion that there was non-compliance but finds that it was not substantial enough to nullify the election, the petition will be dismissed for want of proof. But where the petitioner proves that the alleged acts of non-compliance were substantial and that they affected the election result substantially, the onus shifts to the respondents to prove that the conduct of the election complied substantially with the principles of the Electoral Act and other lawful guidelines issued to regulate the conduct of the election.

Unless the petitioner effectively discharges the onus on him to show how the breaches affected or could have affected the result of the election, the burden of proof will not shift to the respondents

⁴⁴⁰ (n 2); See also *Dayyabu v. INEC* (2023) LPELR-61547(CA).

⁴⁴¹ *APGA v Uba* (2012) 1 LRECN 358 at 404; *CPC v INEC* (2011) 4 LRECN 170 at 211; *Fayemi v Oni* (2011) 4 LRECN 455; *Chime v Onyia* [2009] All FWLR (Pt 480) 673; *Ucha v Elechi* (2012) 1 LRECN 281 at 305.

to show that the election substantially complied with the Electoral Act.⁴⁴² See *Abubakar v Yar' Adua*.⁴⁴³ Failure by a petitioner to prove such allegations and show how they affected the election negatively will defeat his case. He can only succeed where the non-compliance is of a degree which substantially affected the election result, and the respondent is unable to show that the conduct of the election did not substantially affect the result.⁴⁴⁴ In *INEC v Oshiomole* ⁴⁴⁵ after evaluating the evidence in the case, the election tribunal found that the petitioners had creditably discharged the onus to establish their case. Sadly for the respondents, the Court of Appeal found that they failed to provide credible evidence to rebut the evidence of PW47, the Commission's Head of Operations in Edo State, who testified for the petitioners. The Court of Appeal, Therefore, confirmed the decision of the Tribunal that the petitioners proved the allegations of multiple voting and accreditation, which substantially affected the election result.

One thread established by case law is that it is the total effect of the non-compliance on the election result that determines the success of any election petition founded on this ground. No matter the magnitude of the alleged non-compliance, the burden is on the petitioner to tie same to the effect of such irregularity or non-compliance to the result of the election. The law is that once the petitioner is unable to tie the non-compliance, even if proved, to the result of the election, the petition is bound to fail. In *Buhari v Obasanjo*⁴⁴⁶ the court held that the nullification of the result in Ogun State did not affect the overall result of the election in the Federation.

What is needed to sustain an election petition on this score is a substantial non-compliance which affected the result of the election, not just a trivial breach of the Electoral Act with little or no visible impact on the election result.

It was also held in *Buhari v Obasanjo*⁴⁴⁷ that the failure of two officials of the Commission to take the oath of loyalty contrary to the Electoral Act 2002, *per se*, will not lead to the nullification of

⁴⁴² *Buhari v Obasanjo* [2005] All FWLR (Pt 273) 1 at 145; *APGA v Uba* (2012) 1 LREC 358; *Okechukwu v INEC* [2014] 17 NWLR (Pt 1436) 255 at 308-309, paras. G-A.

⁴⁴³ [2009] All FWLR (Pt 457) 1 at 147, C-G; *INEC & Ors v Oshiomole & Ors* (2008) 3 LREC 649 at 702, F-G.

⁴⁴⁴ *Oke & Anor v Mimiko & Ors* (No.2) [2014] 1 NWLR (Pt 1388) 332 at 391-392 paras, Per Onnoghen JSC.

⁴⁴⁵ (2008) 3 LREC at 702.

⁴⁴⁶ (2005) 1 LREC 235; [2005] 2 NWLR (Pt 910) 241.

⁴⁴⁷ (2005) 1 LREC 235; [2005] 2 NWLR (Pt 910) 241.

an election. Also, the non-certification of voting materials, *per se*, is not enough to set aside an election unless where it is shown that it substantially affected the result of the election.⁴⁴⁸

4.0. **Burden of Proof in the United States Electoral Contests**

In Election Contests in the United States of America, under the Federal Contested Elections Act, of 1969⁴⁴⁹ the burden is on contestant to prove that the election results entitled him to contestee's seat, even where the contestee fails to answer the notice of contest or otherwise defend. See *Tunno v Veysey*.⁴⁵⁰

4.1. **Position in the United States of America on non provision of ballots and cancelled votes**

In the United States of America, where a contestant in a contested election case makes a claim to a seat, it carries with it the implication that the contestant will offer proof of such nature that the House of Representatives acting on his allegations alone, could seat the contestant.

Under the contested elections statute, a contestant has the burden of resisting a contestee's motion to dismiss, prior to the submission of evidence and testimony, by presenting sufficient evidence that the election result would be different, or that contestant is entitled to the seat.

Thus, in the 1971 California election contest of *Tunno v Veysey*⁴⁵¹, the House of Representatives committee report recommended dismissal of the electoral contest where the contestant merely alleged that election officials had wrongfully and illegally canceled the votes of 10,000 potential voters, without any evidence as to how these potential voters would have voted. The committee report noted the following burden of presenting evidence:

“Under the new law then the present contestant, and any future contestant, when challenged by motion to dismiss, must have presented, in the first instance, sufficient allegations and evidence to justify his claim to the seat in order to overcome the motion to dismiss.”

The report continued:

⁴⁴⁸ *ibid*

⁴⁴⁹ 1969 2 USC ss 381 et seq.

⁴⁵⁰ H. Rep. No. 92–626 at 3. Online report <<https://www.congress.gov/104/crpt/hrpt852/CRPT-104hrpt852>> accessed 27 March 2025

⁴⁵¹ *ibid*

“The major flaw in the contestant's case is that he fails to carry forward with his claim to the seat as required by the precedents of the House of Representatives and the Federal Contested Elections Act. A bare claim to the seat as the contestant makes in his notice of contest without substantiating evidence ignores the impact of this requirement and any contest based on this coupled with a request for the seat to be declared vacant must under the precedents fail. The requirement that the contestant make a claim to the seat is not a hollow one. It is rather the very substance of any contest. Such a requirement carries with it the implication that the contestant will offer proof of such nature that the House of Representatives acting on his allegations alone could seat the contestant.

“That the contestant in the present case fails to do this is quite clear. If all of his allegations were found to be correct he would still not be entitled to the seat. It is perhaps stating the obvious but a contest for a seat in the House of Representatives is a matter of most serious import and not something to be undertaken lightly. It involves the possibility of rejecting the certified returns of a state and calling into doubt the entire electoral process. Thus the burden of proof placed on the contestant is necessarily substantial.”

The House agreed to a resolution dismissing the contest.

4.2. **Burden of Establishing Claim to Seat in the USA**

Also, in the USA, merely showing that some voters have been precluded from voting through errors of the election officials does not satisfy the contestant's burden of establishing his claim for the seat.

Thus in the above cited 1971 California election contest of *Tunno v Veysey*⁴⁵², the contestant alleged that the election officials had wrongfully and illegally canceled the registration of approximately 10,000 voters. However, the contestant did not show how these potential voters would have voted, and the election committee, after expressing a hesitancy to invalidate an election under these circumstances, held that the contestant had not carried through on his burden of establishing his claim to the seat under the Federal Contested Elections Act and the precedents of the House.

⁴⁵² *ibid*

4.3. **Standard of “Fair Preponderance of Evidence”**

In an election contest in the USA, a contestant has the burden of proof to establish his case, on the issues raised by the pleadings, by a fair preponderance of the evidence.

In *Scott v Eaton*,⁴⁵³ a 1940 California contest, an elections committee summarily ruled that a contestant had not established by a fair preponderance of the evidence that the contestee had violated a California statute or the Federal Corrupt Practices Act, or that any such violation directly or indirectly prevented contestant from receiving a majority of votes cast.

4.4. **The Substantiality Rule in the USA: Burden of Showing that the Results of an Election Would Be Changed By the Non-Compliance**

In the absence of a showing that the results of the election would be changed, lack of knowledge of registration laws and improper enforcement by officials charged with their administration are not such irregularities as will void the results of an election in the USA.

In *Wilson v Granger*,⁴⁵⁴ a 1948 Utah contest, the majority report of the Committee on House Administration acknowledged “widespread and numerous errors and irregularities in many parts of the district,” but nevertheless upheld the 104 vote lead of the contestee because the correct result of the election was not affected by the irregularities shown. The House agreed to a resolution dismissing the contest.

Where the contestant alleges that procedural requirements in an election have not been complied with, he has the burden of showing that, due to fraud and irregularity, the result of the election was contrary to the clearly defined wish of the constituency involved. In *Clark v Nichols*,⁴⁵⁵ a 1943 Oklahoma contest, the Committee on Elections determined that the contestant had proven certain irregularities relating to the failure of local officials in certain precincts to keep registration books and to comply with various administrative requirements imposed by state law, but dismissed the contest for failure of the contestant to bear the burden of showing fraud and irregularity by any election official whereby contestant was deprived of votes. An elections committee will recommend dismissal of a contest where there is no evidence that the election was so tainted with the misconduct of election officers that the true result cannot be determined.

⁴⁵³ [Deschler's Precedents, Volume 2, Chapters 7 - 9] [Chapter 9. Election Contests]

⁴⁵⁴ *ibid*

⁴⁵⁵ *ibid*

In the 1951 Pennsylvania contested election case of *Osser v Scott*,⁴⁵⁶ the contestant contended, as stated in the report, that he was unable to have “honest-to-goodness Democrats file for minority inspector (poll watchers)” and that the Republican Party “will register persons as Democrats in order to file them for minority inspector and to complete the election board.” However, the committee recommended dismissal, which the House subsequently agreed to, because no evidence was presented to show “that the election was so tainted with fraud, or with the misconduct of the election officers, that the true result cannot be determined.”

4.5. **The Substantiality Rule in Evidence Compelling Examination of Ballots in the USA**

To entitle a contestant in an election case in the USA to an examination of the ballots, he must establish (a) that some fraud, mistake or error had been practiced or committed whereby the result of the election was incorrect, and a recount would produce a result contrary to the official returns; and (b) that the ballots since the election have been so rigorously preserved that there has been no reasonable opportunity for tampering with them.

In *O'Connor v Disney*,⁴⁵⁷ a 1932 Oklahoma contest, a committee on elections refused to conduct a partial recount where contestant had failed to sustain the burden of proving fraud or irregularities sufficient to change the result of the election, and of proving such proper custody of ballots as to reasonably prevent tampering with them.

5.0. **The Substantiality Rule and Vitiating Non-Compliance**

The rule that a petitioner must establish that the particular non-compliance proved was substantial enough to affect the result of the election, is called the substantiality rule.

5.1. It has however been strongly argued in many cases, though unsuccessfully, that it is not in all cases that a petitioner is expected to establish that the particular non-compliance was substantial enough to affect the result of the election.

Many jurists are also of the opinion that where acts or omissions, which amount to non-compliance, are so fundamental that the alleged non-compliance vitiates the electoral process and its outcome, or the result, in such circumstances, there should be no burden on the petitioner to establish that the non-compliance substantially affected the election result. If the election suffers a

⁴⁵⁶ *ibid*

⁴⁵⁷ *ibid*

vitiating vice which renders it null and void, in such circumstances, there should no obligation, anymore on the petitioner to prove that the non-compliance affected the result of the election.

This principle of a vitiating vice rendering an election null and void without proof by the petitioner that the vitiating vice affected the result of the election has however only elicited the approval of the Supreme Court in either dissent judgments, or as mere *obiter*. For example, in *Buhari v INEC*⁴⁵⁸ the petitioner challenged the presidential election in the 2007 general election on the ground that it was invalid by reason of non-compliance with the Electoral Act 2006, among other grounds. The non-compliance proved at the trial was that the election was conducted with ballot papers that were not serialized and also not bound in booklets as prescribed by section 45 of the Electoral Act 2006, same as section 44 of the Electoral Act 2010, as amended. The Supreme Court after an exhaustive review of previous decisions on non-compliance, the party having the onus of proof, and the standard of proof required to establish the case, by a majority decision of four (4) against three (3) Justices, held that the petitioner had not proved non-compliance that was substantial enough to invalidate the result of the election. Oguntade JSC, one of the three justices that delivered a dissenting judgment in the case (with Onnoghen and Muktar JJ.SC) however held a contrary view. His Lordship held that the approach of the Supreme Court in such cases, was wrong and therefore needed to be re-visited. He preferred the approach of the Supreme Court, per Coker JSC in *Swem v Dzungwe*,⁴⁵⁹ where it was held that if a court is satisfied that the petitioner had established an alleged non-compliance which might affect the result of an election but was unable to say whether the compliance, in fact, affected the result, the non-compliance would be held as proved and the onus of proof would shift to the respondent to show that the said non-compliance did not affect the result of the election. He therefore concluded that the substantiality rule, as applied by courts of law presently, puts a heavy burden on the petitioner and is “unduly favourable to him and lenient to the respondent who is the perpetrator of the disobedience.”

Concerning the non-compliance alleged in *Buhari's case*⁴⁶⁰, Oguntade JSC, found that the respondents, by their traverse admitted that the election was conducted with ballots not bound in booklets and which did not have any serial numbers contrary to section 45 of the Electoral Act 2006. He therefore, held that the said non-compliance being of a fundamental character rendered

⁴⁵⁸ [2008] 19 NWLR (Pt 1120) 246; (2009) 3 LREC 1 at 170

⁴⁵⁹ (1966) NMLR 297 at 303, (1966) CLR 2(A) SC

⁴⁶⁰ (n 43)

the ballots invalid because, as opined by him, the use of invalid ballots for the election constituted non-compliance that was so fundamental that it violated the principles of the Electoral Act. He held further that the Court of Appeal should have nullified the said election for this reason without placing the burden on the petitioners to show how the non-serialization of the ballots papers and non-binding of the said ballots papers in booklets substantially affected the result of the election. According to him, the said act “was a condition precedent to the holding of the election” without which it was impossible to have a valid election. He reasoned that an invalid ballot paper cannot yield a valid vote. He further held thus:

“An invalid ballot paper cannot yield a valid vote. Clearly, therefore, the petitioner/appellant in my view succeeded in making the case that non-compliance with section 45 (1) of the Election Act 2006 substantially affected the result of the election.”

Both Muktar and Onnoghen JJ.SC concurred with Oguntade JSC on whether the case established by the petitioner required the application of the substantiality rule. On whether the appellant had discharged the onus to prove that the alleged non-compliance substantially affected the election, Onnoghen JSC, held thus:

“I hold the view that it has. There are non-compliances that go straight to the fundamentals of an election thereby affecting the condition precedents to the holding of an election while others may just affect the result of the election where one had been validly held. In other words, some non-compliance may render an election void in which case there is no result of the election to be substantially affected by the non-compliance while the others may substantially affect the result of an election validly conducted.”

In essence, the purport of the dissenting judgments of the three (3) Justices of the Supreme Court was that where a petitioner has established a fundamental breach which negates the principles of the Electoral Act, it constitutes a substantial breach which does not place on the petitioners the onus to prove whether or not the breach substantially affected the result of the election.⁴⁶¹ The reason for the above reasoning of their Lordships is that the non-compliance rendered the election a nullity *ab initio*, and thus, obviated the necessity to further establish how it affected the election.

⁴⁶¹ Na-Bature v Mahuta (1992) 9 NWLR (Pt 263) 85; (1992) 1 LREC 1

In effect, no valid election was conducted *ab initio* that could be subjected to the substantiality rule.

5.2. In *Oke v Mimiko* (No. 2),⁴⁶² a decision of the Supreme Court, Onnoghen JSC, in his concurring judgment, still stuck to his views, hitherto expressed in *Buhari's case*,⁴⁶³ that there is a class of non-compliance that does not call for the application of the test of substantiality, such as when an election is conducted with an invalid voters' register.

Nonetheless, he agreed with the lead judgment that, in the instant case, the injection of names in the voters' register, illegally, did not bring the case of the petitioners within that class of non-compliance which absolutely vitiates an election *ab initio*.

Until these weighty judicial opinions on the non-applicability of the substantiality rule to certain cases of non-compliance receive the affirmation of the majority opinion, of the Supreme Court, applying the substantiality rule to petitions predicated on non-compliance with the Electoral Act still remains good law to be followed by all courts in Nigeria.

6.0. Conclusion

6.1. Summary of Findings

In the course of this research, the following findings were made. (1) The burden of proof placed on the petitioner by the Electoral Act and the Evidence Act is enormous, and there is a need to amend both laws to ensure substantial justice to all the parties. INEC should share the burden to prove that it conducted an election properly and that the result reflected the lawful votes cast. (2) The courts have misinterpreted and misapplied the substantiality rule to include cases where the non-compliance proved is so fundamental as to vitiate the election.

6.2. Recommendations

Based on the above findings, the following recommendations and suggestions are made for reform:

1. Video evidence of the signing of result sheets by polling agents: Under the electoral law the best proof that an election was conducted is the original result or the certified true copy thereof of form EC8A, etc. The said form EC8A, etc recorded by INEC and signed by the polling and

⁴⁶² [2014] 1 NWLR (Pt 1388) 332 at 391-392 paras.. Per Onnoghen JSC.

⁴⁶³ (n 43)

collation agents of the parties are therefore admissions that the election took place and that the result is authentic. And it has been held that the said form signed by such agent binds the agent and the party. See *Gundiri v Nyako*.⁴⁶⁴ Thus signature of the party agent authenticates the result, and he cannot turn around to deny the contents of the result sheet. Therefore the said result sheet or form EC8A, etc. produced by INEC is an admission by the parties of the genuineness of the result. For where the result tendered or certified by INEC does not bear the signature of the party agent, it is worthless and inadmissible, and even if admitted, it has no weight simply because it was not signed or made or acknowledged by the parties as their admission of the results.

Thus the signed EC8A, EC8B etc, are akin to confessional statements or acknowledgement by the party agents of the signatures as their own. And just as is the case with confessional statements in criminal trials, in an election petition, where the electoral official or INEC or the respondent tenders in evidence a result sheet or form EC8A etc, signed by the petitioner's agent, the respondent is simply relying on the signature as the petitioner's agent's acknowledgment or admission or confession of the result as being made by him.

It is therefore recommended that there be a requirement of tendering a video evidence of the making and taking of the result sheet, and it's signing by the party agents to prove that it was indeed signed by them, and that it was signed voluntarily. Thus a respondent and INEC should produce a video evidence of how the election result was made and signed before the result tendered or certified by INEC can be presumed as regular, and taken to be correct.

It should be noted that INEC and the declared winner already have a burden to prove that election was conducted, and that a winner emerged which burden can only be discharged by tendering the result sheet. This further requirement of tendering the video of the making and taking of the result sheet, showing the polling agents, and the INEC presiding officer, signing same will shift the burden of proof of compliance to INEC as the similar burden to prove the voluntariness of confessional statements, is presently placed on the police. No petitioner has the enormous powers of INEC which is similar to that of the police, so INEC should bear the burden to prove that the agents actually signed the result sheets without duress, since it is an admission by the agents that the result sheet is correct, which admission is binding on the petitioner, and therefore it should be treated as a confessional statement which in effect it is.

⁴⁶⁴ [2014] 2 NWLR (Pt 1391) 211.

2. CCTV: Another recommendation is that CCTV cameras should be mounted at polling stations, local government, senatorial, state and national collation centers, to monitor the movement of men and materials on election days. This CCTV recording should be tendered by the respondents where the petitioner alleges non-compliance, thuggery, violence, etc. The burden should also be on the respondents to tender the recordings, since they would be installed by INEC, and therefore would be their property, and in their possession. This will help to prove if there was ballot snatching intimidation, disenfranchisement, etc., as polling stations and collation centers have become crime scenes, so the goings on should be documented in video to avoid denial.
3. Body Camera: Another recommendation is that electoral officials should be made to wear body cameras or bodycams, throughout the day of the election, not just at the polling station but wherever they go, so that all their movements, actions and conversations would be monitored. This will show if they did anything wrong or conspired with politicians to subvert the election. It would show where they went, who they met, what they said and what they did. It would show them altering the results, if they attempt to do so.
4. Automatic electronic transfer or transmission of results: Results should automatically and electronically transferred or transmitted to party offices, candidate campaign offices, High Courts, Courts of Appeal, Supreme Court, Police, Army, NBA and other observers, UN, EU, AU, ECOWAS, etc. emails or systems or websites, to create duplicate copies which can be retrieved to confirm the final result posted by INEC, is also recommended.
5. NBA, EU, AU, and other observers should be allowed to observe vote counting and collation.
6. Paragraphs 12(2) and 15 of the first schedule to the Electoral Act 2022 should be properly interpreted and applied by the courts to fix the burden of proof on the respondent to prove that the petitioner's claim is incorrect, where he is complaining of undue return and claiming the seat or office, and when he is alleging that he had the highest number of valid votes cast, and for the respondent to plead the votes he objects to and the reason for the objection and also the burden to prove that the petitioner is not entitled to succeed.
7. The Burden of proof should be on the slightest evidence: It is also recommended that the burden of proof should be at the slightest evidence or allegation backed with a certified true copy of the result, video recording, bodycam, CCTV or affidavit. The burden should then shift on the production of these materials which should be produced by INEC at the tribunal.

8. BVAS should be for both accreditation and voting: BVAS should be reconfigured to not only accredit voters, but also to record their votes immediately. It should act as a voting machine.
9. Immediate certification of election results, form EC8A, EC8B and EC8C, EC8E by the presiding officers at the polling unit, local government, state and national collation centers.
10. There is a need to review the authorities applying the substantiality rule to proved cases of fundamental non-compliance which should vitiate the results of the election in line with the will of the people, the intendment of the Electoral Act, and common sense.

THE ROLE OF LAW ENFORCEMENT AGENCIES IN COMBATING CYBERCRIME IN NIGERIA

Majebi Samuel Amune, Ph.D*

Abstract

Cybercrime has become a major threat to Nigeria's security and economic stability, with crimes such as internet fraud, identity theft, and ransomware increasingly undermining public trust in digital platforms. Although Nigeria enacted the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 and related statutes to address these challenges, cybercriminals continue to exploit technological loopholes and jurisdictional gaps. This paper examines the role of law enforcement agencies in combating cybercrime in Nigeria, with emphasis on their mandates, strategies, achievements, and constraints. The study identifies the core problem as the widening gap between the improvements on cybercriminal activities and the limited technical, legal, and institutional capacity of Nigerian law enforcement agencies. Despite the involvement of key institutions such as the Economic and Financial Crimes Commission (EFCC), Nigeria Police Force (NPF), National Information Technology Development Agency (NITDA), and the Office of the National Security Adviser (ONSA), enforcement remains hampered by inadequate funding, insufficient manpower, slow judicial processes, and weak inter-agency coordination. Adopting a doctrinal research methodology, the study relies on statutory provisions, judicial decisions, and scholarly works to evaluate the effectiveness of Nigeria's legal and institutional response to cybercrime. Findings reveal notable successes, including high-profile arrests, asset recovery, and collaborative operations with international bodies such as INTERPOL and the FBI, but these remain insufficient given the scale of cyber threats. The paper recommends targeted capacity building, legislative reforms, stronger international cooperation, increased funding, and public-private partnerships to enhance Nigeria's cyber resilience. It concludes that a unified, proactive, and technology-driven national strategy is essential for securing Nigeria's cyberspace and protecting its digital economy.

Keywords: Cybercrime, Cybersecurity, Digital Economy, Law Enforcement, Tax Compliance

1.0 Introduction

As time evolves, technology advances, and the urges to commit crimes increase. As time goes by, different walks of life have decided to employ the use of technology – finance, commerce, entertainment, and even in governance. This, therefore, comes with a price - cybercrime. Although advancing in accompaniment with technology is a digital crime, which is identified as

LL.B. (University of Benin); LL.M., M.Phil., Ph.D (Obafemi Awolowo University) Senior Lecturer, College of Law, Joseph Ayo Babalola University, Ilesa, Osun State, Nigeria & Principal Partner, LawDigital Consult. Email: nobleheirs@yahoo.com Tel: 08033724459

cybercrime. Cybercrime involves the use of computer networks and the internet to target a particular computer network or system as to gain unauthorized access in order to result to causing harm to the targeted network. Cybercrime goes deep into committing fraud, trafficking in child pornography and intellectual property, stealing identities, violating privacy, and many more.⁴⁶⁵ The extent to which cybercrime reaches is not limited to any physical boundaries. The crime itself, the perpetrators, who are the cybercriminals, the victims of the crimes, and the technological tools used in committing the crime span across different jurisdictions. Through the use of technology in exploiting technological vulnerabilities on both a personal and an enterprise level, cybercrime continues to evolve in line with the advancements of technology. This, in consequence, has caused the ability to effectively investigate, prosecute, and prevent cyber crimes to be an ever-trending fight posing many dynamic challenges.⁴⁶⁶

2.0 Types of Cybercrimes

Phishing: This is usually the most common type of cybercrime. In a phishing attack, cybercriminals imitate and impersonate legitimate organizations, which could include banks or government offices, via email, text, or phone calls, in order to persuade and trick individuals into sharing sensitive information. The sensitive information includes login credentials or financial details, which can then lead to identity theft and financial losses for the victims. Business Email Compromise (BEC) is a more targeted form of phishing where cybercriminals manipulate organization employees into making fraudulent transactions which could result in financial losses for the organization.⁴⁶⁷

Ransomware Attacks: it is a type of cyber threats that involves the attacker encrypting the victim's files and demands payment which is a ransom in exchange for regaining access back to the encrypted files. These attacks can paralyze entire organizations, from hospitals to financial institutions, and result in significant financial damage. There are many types of ransomware attack vectors, such as email attachments, website pop-ups, or text messages.

⁴⁶⁵ Michael Aaron Dennis. "Cybercrime". Available at <https://www.britannica.com/topic/cybercrime> accessed on 2nd August, 2025.

⁴⁶⁶ What Is Cyber Crime? Available at < <https://www.proofpoint.com/au/threat-reference/cyber-crime>> accessed on 2nd August, 2025.

⁴⁶⁷ Bitsight Research Team. "Types of Cyber Crimes". Available at < <https://www.bitsight.com/learn/cti/types-of-cyber-crimes>> accessed on 2nd August, 2025.

Identify Theft: Identity theft happens when someone uses the personal information of a victim without the victim's permission. Information like Social Security number, bank account number, and credit card information are used to gain financial benefits or commit fraud. Thieves can use your information to access personal accounts, open up new accounts without the owner's permission, make unauthorized transactions, or commit crimes.⁴⁶⁸

3.0 Overview of Cybercrime in Nigeria

Due to the increasing need for Nigeria to accept the adoption of the use of technology in her system, although, this has caused an increase in social and economic opportunities, however, it does not go without saying that, the use of technology, coupled with vulnerabilities of Nigerians, the economic state in the country, and low level of exposure of Nigerians to the use of technology has served as a cause in increasing the rate of cyber related crimes like mail scams, identity theft, cryptocurrency fraud in Nigeria among many others.⁴⁶⁹ While the use of technology may promote efficiency, increase productivity, and enhance workflows, a little glitch may cause a whole system draw-down for an individual, organization, or even a nation at large, resulting in loss of information, data, or even result in huge financial losses. The estimated annual financial loss in Nigeria due to cybercrime was N250 billion(\$649 million) in 2017 and N288 billion (\$800 million) in 2018.⁴⁷⁰

3.1 Causes of Cybercrimes

Several factors like unemployment, the quest for wealth, a lack of strong cybercrime laws, and incompetent security on personal devices amongst others – have combined to make cybercrime a significant problem for the country. These factors have through certain ways served as the drive pushing criminals to engage in the fraudulent acts.

A. Financial Gain

Usually, the foremost reason why cybercriminals engage in the act is for financial gains. Many cybercriminals find themselves convinced through the potential financial rewards that comes with it. They may decide to engage in stealing sensitive financial information, conduct ransomware

⁴⁶⁸ Ali Hussain, Marguerita Cheng, Vikki Velasquez. "What Is Identity Theft? Types and Examples" available at <https://www.investopedia.com/terms/i/identitytheft.asp> accessed on 2nd August, 2025.

⁴⁶⁹ Edward Olalekan and Mariam Yusuff. "The Evolution of Cybercrime in Nigeria: Trends and Countermeasures" available at https://www.researchgate.net/publication/388634325_The_Evolution_of_Cybercrime_in_Nigeria_Trends_and_Countermeasures accessed on 2nd August, 2025.

⁴⁷⁰ Proshare. "Cybercrime in Nigeria: Causes and Effects". Available at <https://proshare.co/articles/cybercrime-in-nigeria-causes-and-effects> accessed on 2nd August, 2025.

attacks, or engage in fraud schemes to make money from victims, or through the information sold out to a third party.⁴⁷¹

B. Parental Pressure

ometimes, the high expectations from parents cause youth to turn to cybercrime in order to meet up with expectations and achieve the expected success. This happens so, because while under intense pressure from parents, youths often find themselves stuck between the hard place of decision-making and challenging situations. Also, on the flip side, parents, whose duty it is, to discourage their children from engaging in crime, conversely facilitate, encourage and conceal their wards cybercriminal activities.⁴⁷²

C. Complexity of Code

The well-functioning of computer being dependent majorly on operating systems, in which operating system depends highly on code. Since codes are constructed by human, it makes it highly subjected to errors. The errors in these codes may be taken lightly by the user or even the manufacturer, and these may serve as loopholes for cybercriminals to exploit and gain access to information on such computer.⁴⁷³

D. Negligence

Human being are prone to neglecting things, which may even include things related to personal information. Negligence of the user may serve as a costly mistake which cyber criminals may take advantage of, in gaining access to exploit the victims.⁴⁷⁴

4.0 Legal Framework for Cybercrime in Nigeria

A. Cybercrimes (prevention, prohibition, etc) Act 2015

Nigeria embarked on a crucial and important in combating cybercrimes by dedicating an act for it. The primary enactment for combating cybercrimes in Nigeria is the Cybercrimes (prevention, prohibition, etc) Act 2015 which was passed into law in May 2015 by the Nigerian National Assembly, under the President Muhammadu Buhari's administration, making the act serve as the first, and still the major enactment for regulating online activities of persons in the cyber space.

⁴⁷¹ Nusaiba Ibrahim. "Cybercrime: Understanding its Nature, Causes, and Effects" available at <https://sun.edu.ng/5838-2/> accessed on 2nd August, 2025.

⁴⁷² Ibid

⁴⁷³ GeeksforGeeks "Cybercrime Causes And Measures To Prevent them" available at <https://www.geeksforgeeks.org/ethical-hacking/cybercrime-causes-and-measures-to-prevent-it/> accessed on 2nd August, 2025.

⁴⁷⁴ Ibid

⁴⁷⁵In the Act, there are 59 sections, 8 Parts and two schedules. The First Schedule of the Act provides for members of the Cybercrime Advisory Council while the Second Schedule on the other hand provides for businesses to be levied for the purpose of cyber-security Fund.

The Act provides an effective, and well-detailed comprehensive legal regulatory framework for prohibiting, preventing, prosecuting and punishing cyber related crimes, and cyber criminals in Nigeria. In addition to that, the act also protects guards infrastructure which are key to national information, and promotes cybersecurity and the protection of computer systems and networks, electronic communications, data and computer program, intellectual property and privacy rights.⁴⁷⁶ The Act serves as a legislative response to cybercrimes for which there had not been a specific act covering the area, considering the advancement of technology. The Act therefore serves to prevent crimes like *Identity theft and impersonation*,⁴⁷⁷ *Child pornography and related offences*,⁴⁷⁸ *Cyberstalking*,⁴⁷⁹ *Cybersquatting*,⁴⁸⁰ *Racist and xenophobic offences*,⁴⁸¹ *Attempt, conspiracy, aiding and abetting*,⁴⁸² *Importation and fabrication of e-tools*,⁴⁸³ *Breach of confidence by service providers*,⁴⁸⁴ *Manipulation of ATM/POS Terminals*⁴⁸⁵ and many more related cybercrimes. With the Act providing punishments like monetary fines, imprisonment terms as provided by the Act. However, prior to the enactment of the act, there had been an act covering the area of fee fraud in Nigeria. The Advance Fee Fraud and other related Offences Act, 2006, the Economic and Financial Crimes Commission (EFCC) Act, 2004 and the Money Laundering Act, 2012 regulated cybercrimes in Nigeria. The inadequacy of these legislations became a major reason why the Cybercrimes (Prohibition, Prevention, etc) Act, 2015 was made. In the case of *Harrison Odiawa (alias Abu Belgore) v. Federal Republic of Nigeria*,⁴⁸⁶ Between March 2003 and January 2004, Odiawa and his syndicate used deceptive emails and forged documents to convince Mr. Blick to transfer funds under the guise of a lucrative business opportunity.

⁴⁷⁵Olanrewaju Adesola Onadeko, Abraham Femi Afolayan. "A Critical Appraisal of the Cybercrimes Act, 2015 in Nigeria". Available at <https://www.isrcl.com/wp-content/uploads/2021/05/Onadeko-Afolaya-A-critical-appraisal-of-the-cybercrimes-act-in-Nigeria.pdf> accessed on 2nd August, 2025.

⁴⁷⁶ Cybercrimes (prevention, prohibition, etc) Act 2015

⁴⁷⁷ *Ibid* Section 22.

⁴⁷⁸ *Ibid* Section 23.

⁴⁷⁹ *Ibid* Section 24.

⁴⁸⁰ *Ibid* Section 25.

⁴⁸¹ *Ibid* Section 26.

⁴⁸² *Ibid* Section 27.

⁴⁸³ *Ibid* Section 28.

⁴⁸⁴ *Ibid* Section 29.

⁴⁸⁵ *Ibid* Section 30.

⁴⁸⁶ [2008] 57 WRN 83

Following a report to the Economic and Financial Crimes Commission (EFCC), an investigation led authorities to Odiawa's cybercafe, where evidence was recovered, including documents and a mobile phone used for communication with the victim. The offenders were tried under the Advance Fee Fraud and Other Related Offences Act, 2006. The first defendant was sentenced to twelve years imprisonment on each of the four counts without an option of fine while the second defendant was sentenced to ten years imprisonment on each of the three counts without an option of fine. That is to serve an indication that prior to the Cybercrime Act, 2015, Nigeria had a legislation in place, although inadequate to cover wide range of cyber activities.

5.0 Other Related Acts

A. The Constitution

Although the *Cybercrimes (Prevention, Prohibition, etc) Act 2015* identifies as the primary statutory authority serving as the backbone to cybercrimes in Nigeria, the 1999 Constitution of the Federal Republic of Nigeria, 1999, however is not ruled out to address these cyber threats. The Constitution, although not intended to cover these parts in its making, however serves to prevent these crimes by guaranteeing and securing the right to privacy of Nigerians, their telephone calls, and so on. Consequently, when law enforcement authorities require information from a person's cell phone, e-mail, or other electronic devices as part of a telecom service provider investigation into cybercrime, the Nigerian Constitutional right to privacy must be taken into account. In *Independent Television/Radio v. Edo State Board of Internal Revenue*, the Court of Appeal held that "by virtue of the provisions of sections 37, 43 And 44(1), (a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999, the privacy of citizens, their homes, correspondence, telegraphic communication is guaranteed and protected."⁴⁸⁷ Also, the Supreme Court in *Ransome Kuti v. Attorney General of the Federation* held that "A Fundamental Right is a right that stands above the ordinary laws of the land and which is antecedent to the political society itself. It is a primary condition for a civilized existence."⁴⁸⁸ Flowing from the above, it is no gainsaying that the Nigerian Constitution protects people from unnecessary searches and seizures by law enforcement agencies. It also enjoins officers to obtain a search warrant before accessing a place where a person is guaranteed to have a reasonable degree of privacy. Computers, records, and/or

⁴⁸⁷ (2015) 12 NWLR (Pt. 1474) 442

⁴⁸⁸ (1985) 2 NWLR (Pt. 6) 211

information on individual computers are covered by the Nigerian Constitution from searches by law enforcement agents.⁴⁸⁹

B. International treaties and obligations (e.g., Budapest Convention)

Domestic or national laws are the domestic law within a city or a country, which is binding on all forces within such state.⁴⁹⁰ National laws, however, do not have force outside the territory where they are enacted. Due to the increasingly growth of cybercrimes, this results in the need for an international instrument that would be binding on states that are signatory to it, and have it ratified as their local laws. This then could be seen as a rationale behind the Council of Europe Convention on Cybercrime.⁴⁹¹ The convention, famously referred to as the Budapest Convention, is a collective response by members of the European Union and non member states in guarding and combatting against the spread of cybercrimes. The Convention is the first binding multinational treaty to comprehensively address cybercrime, and it has had a profound impact on the international anti-cybercrime legislation.⁴⁹² Since been open for signature in November 2001, twenty-four years later, it still remains the most relevant international agreement on cybercrime and electronic evidence. Since then, they have also made them highly vulnerable to security risks such as cybercrime, mis- and disinformation, foreign influence and more. While there is recognition of the need to strengthen security, confidence and trust in ICT and to reinforce the rule of law and the protection of human rights in cyberspace, all things “cyber” have become more important as they touch upon the fundamental rights of individuals as well as the national security interests of states.

C. Major Law Enforcement Agencies Involved

Due to the rapid surge in cybercrimes, it has become a necessity to create more agencies in combating cybercrimes. This then has served for many jurisdictions to create dedicated enforcement agencies in tackling cyber related crimes.

⁴⁸⁹ The Editorial Board, Wigwe and Partners. *The Legal Framework For Cyber Crimes In Nigeria*. Available at <https://wigweandpartners.com/the-legal-framework-for-cyber-crimes-in-nigeria/> accessed on 2nd August, 2025.

⁴⁹⁰ Susan Buckner, J.D. Melissa Bender, Esq. “*What Is Municipal Law?*”. Available at <https://www.findlaw.com/hire-alawyer/choosing-the-right-lawyer/municipal-law.html> accessed on 2nd August, 2025.

⁴⁹¹ CoE, Convention on Cybercrime – ETS No. 185 (2001).

⁴⁹² Dr. Chat Le Nguyen, Dr. Wilfred Golman. “*Diffusion of the Budapest Convention on cybercrime and the development of cybercrime legislation in Pacific Island countries: ‘Law on the books’ vs ‘law in action’.*” available at <https://www.sciencedirect.com/science/article/abs/pii/S0267364920301266#:~:text=The%20Budapest%20Convention%20as%20a,The%20Council%20of> accessed on 2nd August, 2025.

D. The Federal Bureau of Investigation

Established in 2002, the Federal Bureau of Investigation is the lead domestic intelligence service and a leading federal agency engaged in combating cyberattacks by criminals both in the United States and the international sphere.⁴⁹³ The FBI through different means, gather intelligence, disrupt malicious cyber activity, identify perpetrators, and then declare costs on adversaries. The FBI fosters this team approach through unique organizations where different sectors come to establish a long-term trusted relationships to fight the spread of cybercrime.⁴⁹⁴

E. The Nigeria Police Force

Nigeria Police Force – National Cybercrime Centre (NPF-NCCC), a subsidiary of the general law enforcement agency, the Nigeria Police Force in Nigeria, serves as a premier and leading body in fights against different forms of cyber related offenses in Nigeri. The NPF-NCCC investigates cybercrimes, analyzes digital evidence, coordinates national cybersecurity policies, and enlightens the public in order to protect citizens from online criminal activities. The Centre makes use of advanced forensic tools and comprises of detectives who are well versed, and have strong IT backgrounds.⁴⁹⁵

The NPF-NCCC is recognized as a leading body in fights against cybercrimes, not just through proclamations, but with the involvement of actions, in which the force recorded an impressive achievement in the year 2024 in combating cybercrimes. In 2024, the Nigeria Police Force National Cybercrime Center (NPF-NCCC) successfully recovered a staggering N8,821,001, 881. 80 (Eight Billion, Eight Hundred and Twenty-One Million, One Thousand, Eight Hundred and Eighty-One Naira, Eighty Kobo), 115,237.91 USDT, and \$84,000 (Eighty-Four Thousand Dollars). In which the amounts were restituted to the victims in order to ensure justice to the victims of the fraudulent activities.⁴⁹⁶ Also, similarly in the past year, the Cybercrime Unit has actively engaged in strategic operations, resulting in the arrests and prosecutions of over 751 individuals involved in cybercrime. The unit has successfully recovered a total of 685 devices that were used in these nefarious activities, which include 467 mobile phones, 137 laptops and computers, 46 routers, 4 servers, 1 drone, and 4 Starlink devices. Additionally, the operations led to the confiscation of 16 houses, 39 plots of land, 14 land documents, and 26 vehicles, further

⁴⁹³ FBI. "What We Investigate". Available at <https://www.fbi.gov/investigate/cyber> accessed on 16th August, 2025.

⁴⁹⁴ Ibid

⁴⁹⁵ The NPF. Available at <https://nccc.npf.gov.ng/?utm> accessed on 16th August, 2025.

⁴⁹⁶ https://x.com/PoliceNG/status/1876666816832938407?t=Q6hr-iOCrUggKwwPGG_WGQ&s=19

dismantling the infrastructure supporting cybercriminal activities.⁴⁹⁷ These efforts further have been recognized as the NPF-NCCC was awarded the title of the Best Cybercrime Unit in Africa for 2024 by the INTERPOL Cybercrime Directorate based in Singapore, securing the top position among 54 participating African countries.⁴⁹⁸

F. The Economic Financial Crime Commission

Economic and Financial Crimes Commission, popularly regarded as the EFCC, is a body responsible for investigating and prosecuting economic and financial crimes activities generally in Nigeria. The EFCC, primarily established to go after different forms of deceptions for financial gains, has extended its scope into going after cyber-enabled fraud and internet scams. EFCC also works on legislative reforms, fraud detection, and public enlightenment campaigns to combat cybercrime.⁴⁹⁹ With the determination of the EFCC in combating cybercrimes in Nigeria can be seen as a major justification for introducing a 24-hour Cybercrime Rapid Response Desk on Tuesday, October 22, 2024 which was meant to provide both local and international telephone numbers in reaching the body anywhere across the globe.⁵⁰⁰

The EFCC, through their rigorous fights against cyber related crimes through October 2023, and September 2024, secured 3455 convictions and made monetary recoveries of N 248,750,049,365.52 (Two Hundred and Forty-Eight Billion, Seven Hundred and Fifty Million, Forty-Nine Thousand, Three Hundred and Sixty-Five Naira, Fifty-Two Kobo); \$105,423,190.39 (One Hundred and Five Million, Four Hundred and Twenty-Three Thousand, One Hundred and Ninety Dollars, Thirty-Nine Cents); £ 53,133.64 (Fifty-Three Thousand, One Hundred and Thirty-Three Pound Sterling, Sixty-Four Pence); €172,547.10 (One Hundred and Seventy-Two Thousand, Five Hundred and Forty-Seven Euros, Ten Cents); T1,300.00 (One Thousand, Three Hundred Indian Rupees); CAD \$ 3,400.00 (Three Thousand, Four Hundred Canadian Dollars); ¥74,859:00 (Seventy-Four Thousand, Eight Hundred and Fifty-Nine Chinese Yuan); AUS \$ 740:00 (Seven Hundred and Forty Australian Dollars); 170:00 UAE DIRHAM (One Hundred and Seventy United Arab Emirates Dirham); 73,000:00 KOREAN WON (Seventy-Three

⁴⁹⁷ Ibid

⁴⁹⁸ Ayomikunle Daramola. "Police: Cybercrime unit recovered N8bn, \$115k in 2024 — rated best in Africa." available at <https://www.thecable.ng/police-cybercrime-unit-recovered-n8bn-115k-in-2024-rated-best-in-africa/> accessed on 16th August, 2025.

⁴⁹⁹ EFCC. Available at <https://www.efcc.gov.ng/efcc/> accessed on 16th August, 2025.

⁵⁰⁰ Media and Publicity Team, EFCC. "EFCC Unveils Cybercrime Rapid Response Service". Available at <https://www.efcc.gov.ng/efcc/news-and-information/news-release/10471-efcc-unveils-cybercrime-rapid-response-service> accessed on 4th August, 2025.

Thousand Korean Won); CFA 7,821,375:00 (Seven Million, Eight Hundred and Twenty-One Thousand, Three Hundred and Seventy-Five West African CFA) to R 50:00 (Fifty South Africa Rands).⁵⁰¹

5.0 Strategies and Tools Employed by Law Enforcement

As time goes by, cybercriminals grow in various ways of making attacks, this, therefore, has necessitated the needs for law enforcement agencies to step up their ways of combatting cybercrimes. Through performing their functions, law enforcement agencies have also come up with different strategies in combatting the threats put forward by these data sucking thieves.

A. Digital forensics and investigative techniques

Serving as a key strategy in combating cybercrime, digital forensic expands itself way across different spheres in the digital world. Digital forensics sits itself as a branch under cybersecurity, which focuses on the recovery and investigation of material found in digital devices and cybercrimes.⁵⁰² Digital forensic becomes necessitated in order to present evidence in a court of law when required.⁵⁰³ Digital forensics underpins virtually all cybercrime investigations by enabling law enforcement to identify, preserve, analyze, and present electronic evidence in court.⁵⁰⁴

Law enforcement agencies increasingly integrate AI/ML-enabled tools to automate pattern detection, anomaly flagging, and large-scale data correlation, accelerating lead generation and threat attribution.⁵⁰⁵ Digital forensics play a significant role in fighting cybercrimes as it provides powerful tools and techniques which are core to aiding investigations of cyber crime cases. Through digital forensic, it is feasible to recover the deleted, modified, hidden and corrupted data and to collect the evidence using tools and techniques. Digital forensic can help us to track the attackers place by analyzing network traffic and logs and it also help us to find weakness and loop hole which later we can patch and improve the security.⁵⁰⁶

⁵⁰¹ Ibid

⁵⁰² Abi Tyas Tunggal. "What is Digital Forensics?" available at <https://www.upguard.com/blog/digital-forensics> accessed on 4th August, 2025.

⁵⁰³ Computer Forensic. "What is Digital Forensics? Phases of Digital Forensics in Cybersecurity". Available at <https://www.eccouncil.org/cybersecurity-exchange/computer-forensics/what-is-digital-forensics/> accessed on 4th August, 2025.

⁵⁰⁴ Zenarmor Content team. "An Introduction to Digital Forensics: Types and Techniques". Available at <https://www.zenarmor.com/docs/network-security-tutorials/what-is-digital-forensics?utm> accessed on 4th August, 2025.

⁵⁰⁵ Gilad Ben Ziv. "Emerging Trends and Technologies in Digital Forensics Investigations". Available at <https://www.cognite.com/blog/digital-forensics-investigations/?utm> accessed on 4th August, 2025.

⁵⁰⁶ GeeksforGeeks Content Team. "Digital Forensics in Cyber Security". Available at <https://www.geeksforgeeks.org/computer-networks/digital-forensics-in-cyber-security/> accessed on 4th August, 2025.

B. Cyber Patrol and Surveillance Operations

A society watch on the digital space that monitors activities engaged in by people on the internet space. It involves making use of technology to monitors of Internet users. Digital surveillance is the use of technology in monitoring, tracking, and making checks of activities carried on, within the virtual space.⁵⁰⁷ This method encompasses several key ways it could be carried out. A notable key one is the use of Open Source Intelligence (OSINT). Through, Open-Source Intelligence (OSINT), surveillance is carried out through automated monitoring of public forums, marketplaces, and social media for indicators of trafficking, hate speech, or fraud.⁵⁰⁸ Another way in which this could be done is through proactive cyber patrols, often termed Internet Patrol Units or digital community policing, which allow agencies to detect illicit online activity before formal complaints.⁵⁰⁹

Undercover Online Investigations: Covert profiles on encrypted platforms to infiltrate criminal networks; augmented by threat-specific task forces.⁵¹⁰

C. Use of Artificial Intelligence and Data Analytics

AI and advanced analytics transform law enforcement's ability to detect, predict, and respond to cybercrime. Artificial Intelligence (AI) involves the use of intelligent algorithms and machine learning techniques to make efficient, the detection, prevention, and response to cyber threats. AI supports cybersecurity systems to analyze large information and data, identify certain key patterns, and make quick decisions, which functions far beyond human capabilities.⁵¹¹ The use of Artificial Intelligence in cybersecurity revolutionizes threat detection, and strengthens vulnerability management. Through analyzing behaviors, detecting phishing, and adapting to new threats, AI empowers cybersecurity strategies, enabling proactive defense and safeguarding sensitive data.⁵¹²

⁵⁰⁷ Paul Hawkes. "Digital Surveillance Explained". Available at <https://researchassociates.com/digital-surveillance-explained/> accessed on 4th August, 2025.

⁵⁰⁸ Prithwish Ganguli. "*Digital Policing: Using Social Media Surveillance to Tackle Cybercrime*." Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5124657 accessed on 5th August, 2025.

⁵⁰⁹ Group 2 (Mr. Elcio Ricardo de Carvalho (Brazil), Mr. Mirza Abdullahel Baqui (Bangladesh), Ms. Rita Chun-fa Lam (Hong Kong), Mr. Yoichi Omura (Japan), Mr. Hiroyuki Ito (Japan), Mr. Takuya Matsunaga (Japan), Mr. Gilbert Caasi Sosa (Philippines), Mr. Napoleon Bonaparte (Indonesia), Mr. Jesus Rodriguez Almeida (Mexico)). "Challenges and Best Practices in Cybercrime Investigation". Available at https://www.unafei.or.jp/publications/pdf/RS_No79/No79_15RC_Group2.pdf?utm accessed on 5th August, 2025.

⁵¹⁰ Ibid

⁵¹¹ Fortinet. "AI in Cybersecurity: Key Benefits, Defense Strategies, & Future Trends" available at <https://www.fortinet.com/resources/cyberglossary/artificial-intelligence-in-cybersecurity> accessed on 5th August, 2025.

⁵¹² Ibid

AI-driven systems learn from experience, allowing them to predict, detect, and respond more effectively to known and unknown threats which makes it an advanced distinction to the conventional cybersecurity tools, which rely on established rules to detect threats,. Through that, AI safeguards organizations' cyber measures protect against breaches.⁵¹³

6.0 Challenges Facing Law Enforcement Agencies

Law enforcement agencies worldwide face an unprecedented convergence of challenges that significantly serve as a barrier and hinder their ability to effectively serve and protect communities. These challenges, ranging from resource constraints to technological hurdles and internal integrity issues, threaten the fundamental operations of policing in the 21st century.

A. Inadequate Funding and Technological Tools

Law enforcement agencies are struggling with high budget constraints that significantly limit their operational capacity. Through research, it has been shown that law enforcement and corrections funding is spent on operational costs (salaries and benefits, administrative expenses), leaving only a little amount being directed for other important things like facilities, equipment, and technology.

⁵¹⁴This imbalance creates a critical gap between essential needs and available resources.

The financial pressures are quite much for smaller departments. Lots of these agencies do not have specific budget lines tailored to cater for technology costs and must rely on other entities such as domestic or regional agencies for technological support. This dependency creates vulnerabilities in operational capability and leaves departments unable to independently invest in critical technological infrastructure.⁵¹⁵

B. Technology Investment Challenges

Despite the challenges, technology investments can provide little to no significant returns. Modern technological tools enable departments to quickly identify suspects, locate stolen vehicles, and close cases faster.⁵¹⁶

Police departments face significant obstacles in modernizing their technological capabilities. It has been revealed that the police IT spend goes toward maintaining legacy systems, with most

⁵¹³ Courtney Goodman. "AI in Cybersecurity: Transforming Threat Detection and Prevention." Available at <https://www.balbix.com/insights/artificial-intelligence-in-cybersecurity/> accessed on 5th August, 2025.

⁵¹⁴ National Public Safety Partnership. Understanding Technology Cost Considerations in Law Enforcement. Available at https://vrnclearinghousefiles.blob.core.windows.net/documents/PSP_PoliceTechnologyCost_v5.pdf?utm accessed on 13th August, 2025.

⁵¹⁵ Ibid

⁵¹⁶ Why Police Technology Is a Must for Small Departments. Available at <https://www.flocksafety.com/blog/why-police-technology-is-a-must-for-small-departments?utm> accessed on 13th August, 2025.

technology budgets focused on “keeping the lights on” rather than innovation or transformation.⁵¹⁷ This maintenance-focused approach prevents agencies from investing in cutting-edge tools that could enhance operational efficiency and public safety outcomes.

The procurement process itself, presents additional barriers. Complicated procurement procedures make it difficult for suppliers, especially smaller firms, to work with law enforcement agencies.⁵¹⁸ These bureaucratic obstacles, combined with unstable funding and short-term planning, often result in projects that begin with initial funding but lack resources for scaling up or effective post-implementation support.⁵¹⁹

C. Training and Development Challenges

Insufficient staffing directly impacts training capacity and professional development. With 95% of officers reporting direct impacts of low staffing at their agencies, many officers have less time for training and policy review.⁵²⁰ This training deficit occurs precisely when law enforcement faces increasingly complex challenges requiring specialized knowledge and skills.

The recruiting challenges are compounded by high failure rates during the screening process. Some agencies report disqualification rates as high as 98.5% during the law enforcement screening process.⁵²¹ This combination of high standards and limited qualified applicants creates a mathematical impossibility for filling available positions in many jurisdictions.

D. Jurisdictional Issues and Internet Anonymity

A key feature of the internet is how the usage is not confined in a particular physical boundary. This makes it so for cybercrime as well, as cybercriminals, victims, and the tools used spread across boundaries and different jurisdictions. Due borderless nature of the internet, law enforcement agencies often experience key challenges in jurisdictional issues, and its enforcement. More than half of all criminal investigations now require access to cross-border electronic

⁵¹⁷ How are funding issues holding back the deployment of new police tech? Available at <https://www.virginmediaio2business.co.uk/insights/funding-issues-new-police-tech/?utm> accessed on 13th August, 2025.

⁵¹⁸ Ibid

⁵¹⁹ Ibid

⁵²⁰ Laura Neitzel. “Staffing shortages are having a negative impact on policing, but technology can help”. Available at <https://www.policel.com/police-products/investigation/cameras/articles/staffing-shortages-are-having-a-negative-impact-on-policing-but-technology-can-help-a7y5LsOctxs1QwV7/?utm> accessed on 15th August, 2025.

⁵²¹ Sid Smith. “A Crisis Facing Law Enforcement: Recruiting in the 21st Century”. Available at <https://www.policchiefmagazine.org/a-crisis-facing-law-enforcement-recruiting-in-the-21st-century/?utm> accessed on 15th August, 2025.

evidence, however, traditional legal frameworks remain anchored and focused on particular geographical boundaries that are meaningless and non-enforceable in the cyberspace.⁵²²

Key jurisdictional complications include:

Territoriality principle challenges: The traditional principle granting states authority over activities within geographic boundaries becomes “anachronistic and unable to accommodate the fluid and ubiquitous nature of cyber activities”⁵²³

Effects doctrine complexity: While the effect doctrine principle allows states to assert jurisdiction based on cybercrime effects within their territory, this approach “risks jurisdictional overreach, leading to conflicts between sovereign states”.⁵²⁴

Double criminality requirements: The principle requiring crimes to be recognized in both requesting and requested jurisdictions “often impedes the extradition of cybercriminals” when national laws differ significantly which may cause national conflict between states.⁵²⁵

7.0 Success Stories and Notable Cases

Operation HAECHI IV⁵²⁶

Operation HAECHI IV (July–December 2023) was a six-month long international criminal operation which was led by the International Criminal Police Organization, **INTERPOL**, which was aimed at targeting several fraudulent activities such as voice phishing, romance scams, investment fraud, business email compromise and related cyber-enabled crimes. According to the press release published by Interpol, a joint activity was conducted against a prominent online gambling criminal in Manila. The law enforcement agencies seized a total of USD 199 million in hard currency and USD 101 million in virtual assets. The operation resulted in 3,500 arrests across 34 countries, blocking 82,112 suspicious bank accounts and 367 virtual asset accounts via

⁵²² Fran Casino, Claudia Pina, Pablo López-Aguilar, Edgar Batista, Agusti Solanas, Constantinos Patsakis. “SoK: cross-border criminal investigations and digital evidence Open Access”. Available at <https://academic.oup.com/cybersecurity/article/8/1/tyac014/6909060?utm> accessed on 16th August, 2025.

⁵²³ Hayden Coupla. “Investigating Cybercrime: The Key Jurisdictional and Technical Challenges Faced by Law Enforcement and Ways to Address Them”. Available at https://www.york.ac.uk/media/law/documents/eventsandnewsdocs/2.%20Investigating%20Cybercrime_The%20Key%20Jurisdictional%20and%20Technical%20Challenges%20Faced%20by%20Law%20Enforcement%20and%20Ways%20to%20Address%20Them.pdf?utm accessed 16th August, 2025.

⁵²⁴ Ibid

⁵²⁵ Ibid

⁵²⁶ Interpol intl News. “USD 300 million seized and 3,500 suspects arrested in international financial crime operation”. Available at <https://www.interpol.int/en/News-and-Events/News/2023/USD-300-million-seized-and-3-500-suspects-arrested-in-international-financial-crime-operation> accessed on 16th August, 2025.

I-GRIP. “Cooperation between Filipino and Korean authorities led to the arrest in Manila of a high-profile online gambling criminal after a two-year manhunt by Korea’s National Police Agency.” “The seizure of USD 300 million represents a staggering sum and clearly illustrates the incentive behind today’s explosive growth of transnational organized crime. This represents the savings and hard-earned cash of victims. This vast accumulation of unlawful wealth is a serious threat to global security and weakens the economic stability of nations worldwide.” revealed, **Stephen Kavanagh**, *INTERPOL’s Executive Director of Police Services*.⁵²⁷

Operation Red Card (Nov 2024–Feb 2025).⁵²⁸

The operation was a three month operation aimed at targeting international cyberattacks and cyber enabled scams which led to the arrest of 306 suspects, and the seizure of 1842 devices. The operation spanned across 7 nations in the African continent, including Nigeria, South Africa, Rwanda, Zambia etc.⁵²⁹

The Nigerian police made a total of 130 arrests, including 113 foreign nationals who were allegedly involved in cyber scams, like online casino and investment fraud. The South African authority, on the other hand, arrested 40 individuals including the seizure of over 1,000 sim cards, along with 53 desktops and towers linked to a sim card related fraud. The Zambian made an arrest of 14 individuals who were alleged to be members of a criminal syndicate involved in cyber related fraud.⁵³⁰ According to Neal Jetton, INTERPOL’s Director of the Cybercrime Directorate, “The success of Operation Red Card demonstrates the power of International cooperation in combating cybercrime, which knows no borders and can have devastating effects on individuals and communities. The recovery of significant assets and devices, as well as the arrest of key suspects, sends a strong message to cybercriminals that their activities will not go unpunished.”

“Kaspersky is proud to be part of this collaborative effort led by INTERPOL. The evolving threat landscape in Africa requires a multi-stakeholder dialogue and joint efforts of public and private organizations to address the cybersecurity challenges the region faces today. The Red Card operation is a notable example of such cooperation, showcasing how the expertise of private companies coupled with extensive investigative capacities of law enforcers can foster a more

⁵²⁷ Pierluigi Paganini. “Law enforcement Operation HAECHI IV led to the seizure of \$300 Million”. Available at <https://securityaffairs.com/156209/cyber-crime/haechi-iv-operation-interpol.html> accessed on 16th August, 2025.

⁵²⁸ Interpol News. “More than 300 arrests as African countries clamp down on cyber threats” available at <https://www.interpol.int/en/News-and-Events/News/2025/More-than-300-arrests-as-African-countries-clamp-down-on-cyber-threats> accessed on 16th August, 2025.

⁵²⁹ Ibid

⁵³⁰ Ibid

cyber-resilient environment,” comments Yuliya Shlychkova, Vice President, Global Public Affairs, Kaspersky.

Operation Artemis (2023)

This was a joint operation jointly conducted by the Federal Bureau of Investigation (FBI) and the Economic Financial Crime Commission (EFCC) ⁵³¹ which led to the apprehension of 22 Nigerians who were accused of running sextortion, a crime that led to the increasing suicide of teenagers in the United States, for financial gains. The FBI reported that half of the suspects were connected to the victims who took their lives.

“Once the content was obtained, the victims were blackmailed with threats of public exposure unless they paid ransom often through gift cards, mobile money, or cryptocurrency.

“The harassment frequently continued even after payments were made”, FBI revealed. ⁵³²

Oluwadamilare Samuel (Aug 2025): Conviction under the Cybercrime Act

Lawal Oluwadamilare Samuel was sentenced to jailed on a cybercrime related offence at a Federal High Court sitting in Ikoyi, Lagos State. Lawal was reported to have created a fake facebook account acting under a female profile, identifying as Sandra Brooks, a female in Virginia, United States of State, to one Keith based in the USA, later fraudulently obtaining up to Seven Hundred United States Dollars, \$700. The accused was eventually convicted and sentenced to six months imprisonment, with an option of fine of N3,000,000.00 (Three Million Naira). The accused was also ordered to forfeit the Samsung Galaxy S9, HP laptop, Samsung tab, Mercedes Benz C300 2008 model and N500,000.00. ⁵³³

Conclusion

In the time where technology becomes an integral part of man’s day to day activities, and where easy and effective solutions are brought through the use of technology, businesses have been stuck in between the choice of adopt the use of technology or be seen lagging in areas where competitors have gone past, in their daily activities. This has even prompted financial institutions to adopt the use of technology in replacing manpower where possible.

⁵³¹ EFCC. Available at <https://www.efcc.gov.ng/efcc/> accessed on 16th August, 2025.

⁵³² Ojochenemi Onje “How FBI and EFCC arrested 22 Nigerians for sextortion in operation Artemis”. Available at <https://businessday.ng/news/article/how-fbi-and-efcc-arrested-22-nigerians-for-sextortion-in-operation-aramis/> accessed on 16th August, 2025.

⁵³³ EFCC Media & Publicity Team. “Court Jails Man Six Months for Internet Fraud in Lagos” . Available at <https://www.efcc.gov.ng/efcc/news-and-information/news-release/11339-court-jails-man-six-months-for-internet-fraud-in-lagos-2?utm> accessed on 16th August, 2025.

The adoption of technology, therefore, now has served as a magnet attracting different forms of cyber related crimes like phishing, email scam, advanced fee fraud, and many other cybercrime activities for the purpose of gaining unauthorized access to information and data for financial gains. Hardly a time goes without increase in cyber related crimes being reported. As time goes by, technology improves, cybercriminals continue to explore different methods of attack. This efforts by cybercriminals have not gone without the notice of the government that has been charged with the duty of enacting an act, serving as the cornerstone in combating cybercrimes, particularly, in Nigeria – Cybercrimes (prevention, prohibition, etc) Act 2015.⁵³⁴

The Cybercrime Act, passed into law in 2015 has been the major enactment serving to guide and regulate activities carried on, on the cyberspace in Nigeria. The act provides an effective, and well-detailed comprehensive legal regulatory framework for prohibiting, preventing, prosecuting and punishing cyber related crimes, and cyber criminals in Nigeria. In addition to that, the act also protects guards infrastructure which are key to national information, and promotes cybersecurity and the protection of computer systems and networks, electronic communications, data and computer program, intellectual property and privacy rights.⁵³⁵ However, despite having a primary enactment serving to address the issues of cybercrimes, as well as having other acts addressing the threats posed by cybercrimes, it begs the question of *how have cybercrimes reduced in Nigeria?* On an objective look is the discovery that it is only ideal to say that the act is without its loopholes, and lack of Enforcement posed by the act serves as a way to manipulate its provisions by potential cybercriminals.

The continuous increase in cybercrime has imposed the duty of addressing and moving from combatting traditional financial crimes, and crimes generally to addressing cybercrimes on law enforcement agencies like the Economic Financial Crime Commission (EFCC), the Federal Bureau of Investigation (FBI), the Nigeria Police Force creating a cybercrime department identified as the Nigeria Police Force – National Cybercrime Centre, which consists of officers who have a very strong IT background and are well versed in the aspect of technology. Another notable efforts taken by these law enforcement agencies include the creation of a 24- hour Cybercrime Rapid Response Desk which was meant to provide both local and international

⁵³⁴ Cybercrimes (prevention, prohibition, etc) Act 2015

⁵³⁵ See the preamble of the Cybercrimes (Prevention, Prohibition) Act, 2015.

telephone numbers in reaching the body anywhere across the globe.⁵³⁶ Ideally, it is will only be fair to recognize the continuous efforts of these law enforcement agencies who have since it became a task, engaged in rigorous fights against cybercrimes and cybercriminals. The participation of law enforcement agencies in several key operations has witnessed the capture of cybercriminals, recovery of stolen funds and recovery of stolen items. Notable operations which have been participated in include the transcontinental **Operation HAECHI IV**⁵³⁷ by the INTERPOL, **Operation Red Card**,⁵³⁸ an African Continental operation, **Operation Artemis (2023)**⁵³⁹ jointly operated by the FBI and EFCC. These operations have witnessed “clamp down” of several cyber threats, cybercriminals, seizure of bank accounts, and recovery of several items including phones, laptops, among many others.

⁵³⁶ Media and Publicity Team, EFCC. “EFCC Unveils Cybercrime Rapid Response Service”. Available at <https://www.efcc.gov.ng/efcc/news-and-information/news-release/10471-efcc-unveils-cybercrime-rapid-response-service> accessed on 4th August, 2025.

⁵³⁷ Interpol intl News. “USD 300 million seized and 3,500 suspects arrested in international financial crime operation”. Available at <https://www.interpol.int/en/News-and-Events/News/2023/USD-300-million-seized-and-3-500-suspects-arrested-in-international-financial-crime-operation> accessed on 16th August, 2025.

⁵³⁸ Interpol News. “More than 300 arrests as African countries clamp down on cyber threats” available at <https://www.interpol.int/en/News-and-Events/News/2025/More-than-300-arrests-as-African-countries-clamp-down-on-cyber-threats> accessed on 16th August, 2025.

⁵³⁹ Ojochenemi Onje “How FBI and EFCC arrested 22 Nigerians for sextortion in operation Artemis”. Available at <https://businessday.ng/news/article/how-fbi-and-efcc-arrested-22-nigerians-for-sextortion-in-operation-artemis/> accessed on 16th August, 2025.

THE ROLE AND CHALLENGES OF THE POLICE IN THE ADMINISTRATION OF JUSTICE IN NIGERIA

Temitope Daniel Bamidele*

Yewande Fadeke Oluwajobi**

Grace Olamide Bamidele***

Abstract

The study examined the historical emergence, duties and powers and the professional practices of the Nigeria police within the administration of criminal justice system in Nigeria together with its nature, prospects and challenges. These were with a view to strengthening the administration of criminal justice system in Nigeria. The study relied on primary and secondary sources of information. The primary source comprised the successive Constitutions of the Federal Republic of Nigeria, judicial decisions, and various statutes enacted for an enhanced administration of Criminal Justice System in Nigeria more particularly, the Administration of Criminal Justice Act, 2015, Nigeria Police Act, 2020 and so on. The secondary source of information included books, journal articles, newspapers and magazine publications and; the internet. Data collected were subjected to content analysis. The study found that there exists in Nigeria both internal and external problems bedeviling the role of police in the administration of criminal justice system in Nigeria. It also found that if the Criminal Justice System in Nigeria would achieve the expected objective culminating in their existence, the challenges of corruption must be decisively addressed. The study concluded that though there are several challenges that are currently hindering the efficiency and effectiveness of the police in the Administration of Criminal Justice in Nigeria, quick intervention from government can assist in ameliorating the situations. There are several laws that have been put in place to ensure an improved, better, and speedy administration of Criminal Justice System in Nigeria, unless concerted efforts are made by the stakeholders in the administration of criminal justice system in Nigeria, certain bottle neck in the bureaucratic plane would not allow effective application of laws bringing the needed reform.

Keywords: Police administration, criminal justice, arrest warrant, police reforms.

1.1 Introduction

The success of any system of criminal justice administration depends largely on the efficient discharge of the obligations imposed by law on agencies involved in criminal justice delivery. The Police Force is one of those agencies.⁵⁴⁰ The Police are predominantly responsible for the

* LLB, LLM, M.Phil (in view) (Ife), 08166317022, Email Address: bamidele.temitope007@gmail.com.

** LL.B, LLM, M.Phil, Ph.D (Ife) Lecturer, Department of Jurisprudence and International Law, Faculty of Law, Redeemer's University, Akoda Ede, Osun State; Email Address: oluwajobiy@run.edu.ng; oluwajobiyewande@gmail.com, 07035155587.

*** BL, LL.B, 08168010825, Email Address: okeolamide01@gmail.com.

maintenance of public order in a state. It is the responsibility of the police to ensure the maintenance of law and order, preserve societal values, protect lives, liberty and properties of the people.⁵⁴¹ In the same vein, the Police are the first contact in the administration of criminal justice system as they are responsible for arresting offenders, gathering needed evidence to prosecute offenders, deciding if and what charges will be filed, and charging offenders to court where need be.⁵⁴² Hence, it cannot be overemphasized, that without the existence of the Police, there would be disorder, anarchy and disarray in the society. The people would live in a state of nature where life would be vicious, brutish and uncivilized. Verily, one's safety and liberty are guaranteed by the law, but this is only in theory, practically, the laws are implemented by the Police. The Nigeria Police Force is a creation of law entrenched in the Constitution of the Federal Republic of Nigeria (as amended) under Section 214 (1) as follows:

There shall be a Police Force for Nigeria which shall be known as the Nigerian Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.

The Constitution further provides that the Nigeria Police Force shall be organized and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly and that the members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by the law.⁵⁴³ Pursuant to Section 214(2) (a) & (b) of the Constitution, the Nigerian legislature enacted the Police Act⁵⁴⁴ which provides for the establishment of Police Force and also specifies in details the duties and functions of the Nigerian Police. Section 3 of the Nigeria Police Act [NPA 2020] provides that “there shall be established for Nigeria a Police Force to be known as the Nigeria Police Force.” Section 4 of the NPA 2020 provides that the Police shall

- (a) prevent and detect crimes, and protect the rights and freedom of every person in Nigeria as provided in the Constitution, the African Charter on Human and People's Right and any other law;
- (b) maintain public safety, law and order
- (c) protect the lives and property of all persons in Nigeria.

⁵⁴⁰ W. A. Adebayo “Nigerian Police: Structure, Powers and Functions” in T.F Yerima & B. Abegunde (Eds) *Essays on Administrative Law in Nigeria*, (Petoa Educational Publishers 2006)

⁵⁴¹ Ibid

⁵⁴² E. E. O. Alemika and I. C. Chukwuma “Police-Community Violence in Nigeria” in Lecture delivered at Centre for Law Enforcement Education, Lagos and the National Human Right Commission, Abuja Nigeria (2000).

⁵⁴³ Section 214(2)(a) & (b)

⁵⁴⁴ The Nigeria Police Act 2020 repealed the Police Act, Cap 19 Laws of the Federation of Nigeria 2004

- (d) enforce all laws and regulations without any prejudice to the enabling Act of other security agencies.
- (e) discharge such duties within and outside Nigeria as may be required of it under this Act or any other law.
- (f) collaborate with other agencies to take necessary action and provide the required assistance or support to persons in distress, including victims of road accidents, fire disaster, earthquakes and floods
- (g) facilitate the free passage and movement on highway, roads and street open to the public; and
- (h) adopt community partnership in the discharge of its responsibilities under this Act or under any other law; and
- (i) vet and approve the registrations of private detective schools and private investigative outfits

Apart from the Constitution and the NPA 2020, the duties imposed on the Nigerian Police can be located in a number of other statutes such as Criminal Code Act,⁵⁴⁵ Administration of Criminal Justice Act 2015 [ACJA 2015] and Customs and Excise Management Act⁵⁴⁶ among many others.

2.1 Brief History of the Nigerian Police Force

The amalgamation of Northern and Southern Nigeria in 1914 was a precursor to the formation of the present Nigeria Police Force on April 1, 1930, with it headquartered in Lagos, commanded by an Inspector-General of Police.⁵⁴⁷ Nigerians assumed the overall leadership of the force in 1964 when Louis Orok Edet was appointed the first indigenous Inspector General of Police. Since then, fourteen other Nigerians, including the incumbent, Kayode Adeolu Egbetokun, have all been at the helm of the Police affairs. As it stands today, The Nigerian Police Force is a creation of S 214 (1) CFRN which makes it a national force with the power to solely operate throughout the country. Thus, by virtue of Section 4 of Police Act 2020, power is conferred upon the force for the maintenance of law and order throughout the country. The Nigerian Police has a centralized management command structure in which the Inspector- General of Police is saddled with the operational control of the force. As the head of the Force, the Inspector General of Police is appointed from among some serving top hierarchy of the Force. The appointment is made by the President based on the advice of the Nigeria

⁵⁴⁵ Cap C38 Laws of the Federation of Nigeria, 2004

⁵⁴⁶ Cap C45 Laws of the Federation of Nigeria, 2004

⁵⁴⁷ A. Akano 'The Police, Rule of Law and Human Rights: The Police Perspective' in Tamuno, Bashir, Alemika and Akano (editions) *Policing in Nigeria; Past, Present and Future* (Malthouse Press Limited 1991) 440

Police Service Commission.⁵⁴⁸ It is noteworthy that from the colonial period to date, the role of Nigeria Police has been quite reflective of the political, economic and social development in the country. In other words, the character roles, and priorities of the Police in the country are principally determined by the changing nature of the political and economic structure of the country at different times. As earlier emphasized the duties and power of the Nigeria Police Force are statutory. They are created by the Constitution of Federal Republic of Nigeria⁵⁴⁹ but can also be found in other statutes. For the current purpose, some of these powers will be discussed as hereunder:

2.1.1 Power to Investigate Crimes

Police investigation is the foundational efforts for assembling of evidence for the prosecution of a criminal case. Though by virtue of section 66 of the Nigeria Police Act 2020, police power of prosecution is well donated, it is noteworthy that preliminary to the exercise of the prosecutorial power in criminal investigation. During investigation, the Police exercise an extensive power to do a number of things which include power to take measures to prevent crime,⁵⁵⁰ power to arrest,⁵⁵¹ power to interrogate suspect,⁵⁵² power to interview witnesses,⁵⁵³ power to search properties and person in order to prevent crime, detect and apprehend offenders and collect evidence for prosecution,⁵⁵⁴ power to grant bail to suspects pending the completion of investigation and before arraignment in court,⁵⁵⁵ power to serve summons,⁵⁵⁶ Power to disperse illegal and unlawful procession and assembly.⁵⁵⁷

2.1.2 Power to Arrest

To make an arrest is “to deprive a person of his liberty by legal authority; taking under real and assumed authority custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand”⁵⁵⁸. Arrest is the starting point in criminal proceedings and the Police are empowered by Section 3 of the Administration of Criminal Justice Act (2015) and Section 32 of the Police Act 2020 to arrest an offender unless there is a

⁵⁴⁸ P. Ahire, *Imperial Policing: The Emergence and Role of the Police in Colonial Nigeria 1860-1960* (Open University Press, 1991) P. 40

⁵⁴⁹ Constitution of Federal Republic of Nigeria 1999 as (altered), s 214

⁵⁵⁰ Nigeria Police Act 2020 ss 4 (a) & 83; see also Administration of Criminal Justice Act 2015 s 50

⁵⁵¹ Ibid, s 40; see also ACJA 2015 s 89 [n 10]

⁵⁵² Ibid, s4, s42; see also ACJA 2015 s 18 [n 10]

⁵⁵³ Ibid

⁵⁵⁴ See NPA 2020 ss 4, 49, 50, 51 & 52; see ACJA 2015 ss 9-12

⁵⁵⁵ NPA 2020 s 60; see also ACJA 2015 ss 30 & 31

⁵⁵⁶ NPA 2020 s 65

⁵⁵⁷ See provisions of Public Order Act and Criminal Code Act s 72.

⁵⁵⁸ Garner Bryan, *Black's Law Dictionary* (7th edition, West Group 1999)

submission to custody by word or action. There are essentially two types of arrest; arrest with warrant and arrest without warrant. The power of Police to effect arrest with or without warrant often depends on the nature of the offence. Sections of the law creating offences in respect of which an offender cannot be arrested without warrant usually stipulates so,⁵⁵⁹ so that it will be clear to any police or other officer intending to effect an arrest that a warrant is needed.

2.1.2.1 Arrest with Warrant

A warrant of arrest is an authority in writing issued by a court to a Police Officer or any other person to arrest an offender and bring him before the court to respond to the allegations made against him.⁵⁶⁰ The warrant is usually issued by a Magistrate or a Judge of a High Court after complaint on oath has been received that a person has committed an offence.⁵⁶¹ A warrant of arrest must be in writing signed by the Magistrate or Judge and must contain necessary particulars such as date of issue, the person to whom it is directed and it may be issued on Sunday or public holiday⁵⁶²

A warrant of arrest once issued remain in force until the named offender therein is arrested or until it is vacated or revoked by a Magistrate or a Judge.⁵⁶³ However, if an arrest has been made on the authority of the warrant but the person arrested escapes or is discharged, he cannot be re-arrested with the same warrant until a new one is issued. Irregularity in the issue of warrant of arrest does not render the warrant invalid or nullify the trial of the offender arrested thereunder, unless it can be shown that a miscarriage of justice has in fact been occasioned by such error, omission or irregularity⁵⁶⁴

2.1.2.2 Arrest Without Warrant

Police officers are empowered by law to arrest offenders without warrant particularly the serious ones.⁵⁶⁵ This is to avoid any ugly situations in which offenders will be allowed to escape arrest. It will be ridiculous for a Police officer to go in search of a warrant when a person is committing felony in his presence, such an offender would surely escape. Therefore, a Police officer can effect an instant arrest without warrant in the following instances and on the

⁵⁵⁹ Criminal Code Act s 376

⁵⁶⁰ ACJA 2015 s. 35 see [n 10]

⁵⁶¹ Ibid s.35, *Ikonne v COP* (1986) 4 N.W.L.R (pt 36) 473

⁵⁶² Ibid s.35, 36, and 37

⁵⁶³ Ibid s.35 (2)

⁵⁶⁴ *Mottatadonu v Ahu* (1995) 8 N.W.L.R (pt 412) 225 at 238; Section 382 of the Criminal Procedure Code

⁵⁶⁵ ACJA 2015, S 18, Criminal Procedure Code s.26, Nigeria Police Act 2020 s 32; *Dallison v. Coffrey* (1964) 2 ALL E.R 1203; *Associated Provincial Picture House Ltd. V. Wednesbury Corporation* (1948) 1 K.B, 224

following persons:

someone whom he suspects on reasonable ground of having committed an offence against a law in Nigeria or against the law of any other country, unless the law creating the offence provides that the suspect cannot be arrested without a warrant; who commit any offence in his presence.; who obstructs the Police officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody; in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to the thing; whom he suspects on reasonable grounds of being a deserter from any of the armed forces in Nigeria; whom he suspects on reasonable grounds of having been involved in an act committed at a place outside of Nigeria which, if committed in Nigeria, would have been punished as an offence, and for which he is, under a law in force in Nigeria, liable to be apprehended and detained in Nigeria; having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking, car theft, firearm or any offensive or dangerous weapon; whom he has reasonable cause to believe a warrant of arrest has been issued by a court of competent jurisdiction in Nigeria; found in Nigeria taking precaution to conceal his presence in circumstances, which afford reason to believe that he is taking such precaution with a view to committing an offence; whose arrest a warrant has been issued or whom he is directed to arrest by a Judge, Magistrate, Justice of the Peace or superior police officer; whom he reasonably suspects to be designing to commit an offence for which the police may arrest without a warrant, if it appears to him that the commission of the offence cannot be otherwise prevented or⁵⁶⁶; required to appear by a public summons issued under this Act or any other Act.

The power conferred on a Police officer to arrest any person who commits an offence in his presence by Section 26 (a) of the Criminal Procedure code is absolute. It is not subjected to the limitation contained in Section 18 of the ACJA. It has been held, with reference to Section 18 of the ACJA that grounds for reasonable suspicion may be borne out of a Police officer's personal knowledge or facts stated to him by another person.⁵⁶⁷ Under Section 3 of the ACJA, and Section 26 of the Criminal Procedure Code (CPC), a police officer is empowered to arrest any person who is suspected to have committed an offence and who refuses to give full particulars about himself. And by section 26(e) of the CPC, the Police are also authorized to arrest any person known to be proposing to commit an offence if it appears to a police officer that the commission of such offence cannot be otherwise prevented.

2.1.3 Power to Conduct Searches

After a police officer has made a lawful arrest, he is empowered to conduct searches both on the

⁵⁶⁶ Section 26 of Criminal Procedure Code

⁵⁶⁷ *I.G.P v Ogbomor* (1957 W.R.N.I.R) P 140

person arrested and even on the premises.⁵⁶⁸ The word “search” can be defined as ‘an examination of a person’s body, property or other area that the person would reasonably be expected to consider private, conducted by a law enforcement officer for the purpose of finding evidence of crime.’⁵⁶⁹ A search is intended to seek out anything that is hidden, which is unlawful or even though lawful, is the evidence of a crime.

The essence of search is to obtain evidence upon which a conviction can be secured; therefore, it is important and essential to criminal investigation and prosecution. Furthermore, a search may be by way of medical examination of the body of a person suspected to have committed a crime. The medical examination may be conducted by a qualified medical practitioner at the request of a police officer or any other person under the direction of a medical practitioner or police officer.⁵⁷⁰ Under section 49 the Police Act, a police officer has power to detain and search a person whom he reasonably suspects of being in possession of stolen property.⁵⁷¹ However, in conducting a search on a woman, it is the requirement of the law that the search will be conducted by another woman⁵⁷² and it is indecent and unlawful for a woman while searching the body of another woman, to fondle, caress or violate her person.⁵⁷³ However, it is lawful for a man to search other thing attached to the person of a woman such as handbags, briefcases etc. It is the rule that for premises to be searched a search warrant must be issued out to such Police officer except if a person to be arrested under a warrant of arrest is suspected of being in a premises, a police officers can enter such premises and search for the person without a warrant⁵⁷⁴ and it is required that search must be conducted in the presence of two respectable residents of the neighborhood sent for by the person to whom the search warrant is addressed. A police officer may detain and search any person whom he reasonably suspects of having in his possession or carrying in any manner, anything, which he has reason to believe to have been stolen or otherwise unlawfully obtained.⁵⁷⁵ A search warrant is usually procured upon information on oath and is issued by a magistrate upon being satisfied that a reasonable ground exists for believing that any building, ship, carriage is being used for the commission of an

⁵⁶⁸ ACJA 2015, s 9, Criminal Procedure Code s 44

⁵⁶⁹ Garner .B. *Black’s Law Dictionary* (7th edition, West Group 1999) p 1351

⁵⁷⁰ Ibid, see Criminal Procedure Code s 127

⁵⁷¹ Custom and Excise Management Act s 150

⁵⁷² See Criminal Procedure Code s 82, see also Customs and Excise Management Act. S 150 (2)

⁵⁷³ Criminal Procedure Code Section 82

⁵⁷⁴ Ibid, see the Criminal Procedure Code, Section 34

⁵⁷⁵ Nigeria Police Act 2020 55 and 56

offence.⁵⁷⁶ A police officer of the rank of Cadet ASP can also issue a search warrant. This power however, is limited to the issuance of warrant in respect of a shop, warehouse or other premises which within the preceding 12 months was occupied by any person convicted of receiving stolen property or of harboring thieves.⁵⁷⁷

2.1.4 Power to Prevent Crimes

Pursuant to Section 4 of the Police Act which provides that ‘the police shall be employed for the prevention and detection of crimes, the apprehension of offenders and preservation of law and order.’ It may be stated that the most crucial aspect of police role is the detection and prevention of crimes and it is in fact by reason of the importance of the law attached to this role that the police has been given wide power under the relevant statutes.

Under Section 50 of the Administration of Criminal Justice Act 2015, ‘every police officer may interpose for the purpose of preventing and shall to the best of his ability prevent the commission of an offence’. It is further provided that every police officer receiving information of a design to commit any offence shall communicate such information to the police officer to whom he is subordinate and to any other officer to whom he is cognizance of the commission of any such offence.⁵⁷⁸ A police officer is authorized to arrest any person whom he finds committing a breach of the peace of whom he believes on reasonable grounds about to join or renew the breach of peace

2.14.1 Power to Grant Bail

Bail is a basic constitutional right guaranteed by Section 35 of the Constitution. To grant bail is a security such as cash or a bond; security required by a court for the release of a prisoner who must appear at a future time.⁵⁷⁹ When bail is granted, a suspect, an accused or a convicted person is granted temporary release from custody, pending the conclusion of investigation, the determination of the case against him, or the determination of his appeal against conviction.

The police are empowered under Section 62 of the Police Act 2020 to grant bail to arrested person where it is impossible to bring them to court within the time prescribed by the law. The

⁵⁷⁶ ACJA 2015, Section 144 [n 10]

⁵⁷⁷ NPA 2020, Sections 55 and 56 [n 10]

⁵⁷⁸ ACJA 2015, section 51

⁵⁷⁹ Garner .B. *Black's Law Dictionary* (7th edition, West Group 1999) p 135

basis of the power is in Section 35(4) & (5) of the Constitution of the Federal Republic of Nigeria (1999 as amended) which disallows the police from detaining suspects beyond a maximum period of 48 hours.⁵⁸⁰ There is really no formal procedure for making an application for bail but in practice it is usually in the court of superior records while an oral application is allowed in the court of inferior records such as Magistrate Court. Usually a person is granted bail by the police upon his entering into recognizance, with or without sureties, to appear at a police station or court on a subsequent date stated in the recognizance.

The application for bail at the police station is made in writing, either the suspect or his surety makes it. Upon application for bail, the suspect may be admitted to bail with or without conditions. Where conditions for bail are stipulated, the suspect must satisfy the stated conditions before he is released. Any suspects who fail to satisfy the condition set for his bail will remain in custody, and given that it is the accused person's duty to satisfy the bail conditions, his continued detention will not amount to a violation of his constitutional right.⁵⁸¹

2.1.4.2 Power to Conduct Criminal Trial

Section 66 of the Police Act 2020 provides thus:

Subject to the provision of Section 174 and 211 of the Constitution of Nigeria and section 106 of the Administration of Criminal Justice Act which relates to powers of the Attorney General of the Federation and of a State to institute, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria, a police officer who is a legal practitioner may prosecute in person before any court whether or not the information or complaint is laid in his name. A police officer may, subject to the provision of the relevant criminal procedure laws in force at the Federal or State level, prosecute before the courts of law those offences which non-qualified legal practitioner can prosecute

In relation to section 66 of the Nigeria Police Act 2020, it is clear that the power vested in the police to conduct criminal proceedings thereunder is subject only to the power of the Attorney- General of the Federation or the Attorney-General of a state to institute, undertake, take over, continue or discontinue criminal trials in courts in Nigeria.

Apart from this limitation there is no law that says the police can only conduct criminal proceedings in the inferior courts. The Supreme Court, per Tabai J.S.C held in *Uwagba v*

⁵⁸⁰ *Eda v COP* (1982) 3 N.C.L.R 219

⁵⁸¹ *Ibid*

*F.R.N*⁵⁸² that when words used in a statute are clear and unambiguous, the court will, in keeping with a fundamental canon on interpretation, accord them their natural meanings and the provisions of Section 66 of the Police Act is so clear in its spirit and intendment that it can only be accorded its natural, literal and grammatical meaning. The decision of the Court of Appeal in *Ajakaiye v F.R.N*,⁵⁸³ Saulawa J.C.A, states thus, on the power of the police to conduct criminal proceedings:

By the virtue of the provision of Section 23 of the Police Act,⁵⁸⁴ any police officer has the power to conduct in person all prosecution before any court of law in Nigeria whether not the information or complains is laid in his name. However, the exercise of such power is strictly subject to the well set out provisions of Sections 160 and 190 of the 1979 Constitution and now Sections 174 and 211 of the 1999 Constitution.

2.2 Fundamental Flaws of Nigerian Police

The Nigeria Police Force is saddled with the responsibility of maintenance of law and order. It also prevents, and investigate criminal activities. In discharge of these duties, the force has over the years failed and this is by the virtue of inherent flaws and challenges that have influenced the force in its application of its power as having been statutorily provided. Some of these flaws are:

- a. The abuse of human rights, collection of bribes, corruption in the force, indiscriminate shooting of suspects and fellow policeman, illiteracy and incompetence of certain police officers.
- b. There is police lawlessness which begins with small irregularities or illegalities such as disquieting features of committing crime of falsifying crime records against accused persons. These sorts of events, actions or inactions indulged in by the policeman show an open disregard for the principles of the rules of law and civilized conduct which adversely affect police discipline and make mockery of the Nigeria Police Force generally.
- c. There are also the problems of police extortion at road checkpoints, mounting of illegal roadblocks, arbitrary arrest and detection, torture of detainees, administrative cover-ups of crimes committed by the police force in the course of discharging their duties.

3.1 The Challenges of the Police in the Administration of Criminal Justice

The Police is saddled with much responsibilities when it comes to prevention and detection of

⁵⁸² (2009) 15 NWLR (pt 1163) 91 SC

⁵⁸³ (2010) 11 NWLR (Pt 1206) 500

⁵⁸⁴ Now section 66 of the Nigeria Police Act 2020

crimes in the society. However, it cannot be said that Police are carrying out these responsibilities religiously, and this failure of the Police is as a result of the challenges facing the Police in the discharge of their duties. In Criminal Justice System, there are self-inflicted challenges caused by the Police that slow down the entire administration of criminal justice in Nigeria as a whole. Under this heading, the institutional constraint of the Nigerian Police, and major challenges of Nigerian Police in Criminal Justice System shall be discussed.

3.1.1 Institutional Constraint of The Nigerian Police and Criminal Justice System

(a) Police Organization and Management

Organization and management of police forces in terms of vertical and horizontal decentralization and coordination of authority have implications for police behaviour, performance and image.⁵⁸⁵ The nature of rules of policing established by the police force, adherence to these rules, rewards or punishment for compliance or non-compliance to these rules influence police discipline, integrity, effectiveness, performance and legitimacy, including public estimation and support.⁵⁸⁶ The Nigeria Police Force needs to do a lot more in developing its organizational and managerial capacity to meet demands and challenges of policing in the country.⁵⁸⁷

(b) Police Personnel Management

The rules and provisions for recruitment, training deployment, remuneration, promotion, discipline and pension and retirement affect police discipline, performance and image.⁵⁸⁸ In Nigeria, these aspects are not given adequate and continuous attention. Supervision and coordination are generally lacking. Corruption, partisan and parochial considerations have contaminated the process and decisions relating to recruitment, deployment and promotion in Nigeria Police Force, thereby dampening motivation and commitment to excellence, sacrifice and integrity in police work.⁵⁸⁹ But a particularly healthy development that indicates an emerging new Nigeria Police is the increasing number of highly qualified people in the Police force and who are gradually being given leadership position. If properly nurtured, this may in

⁵⁸⁵ Walker Samuel, *A Critical History of Police Reform: The Emergence of Professionalism* (Lexington Books 1977) 170.

⁵⁸⁶ Wesley G. and Susan M., *Community Policing* Chicago Style. (Oxford University Press, 1977) 52.

⁵⁸⁷ Tamuno .T., *The Police in Modern Nigeria* (University of Ibadan Press, 1970) 100.

⁵⁸⁸ Arase J. and Iwufor, *Policing Nigeria in the 21st Century* (Spectrum Books, 2007).

⁵⁸⁹ Akano A., 'The Police, Rule of Law and Human Rights: The Police Perspective' in Tamuno, Bashir, Alemika and Akano (editions) *Policing in Nigeria; Past, Present and Future* (Malthouse Press Limited 1991) 440.

fact be an important factor in the development of a new Nigeria Police that is in harmony with the community it serves. But the corrupt elements that have long been embedded in the country's police force may still extinguish the new light, if the Police Service Commission and the police leadership fail to nurture the positive development.

(c) Information Management

The ability of a police force to manage information relating to socio-economic and political trends and to relate such information to trend, pattern and severity of crimes will determine its capacity to plan and implement crime prevention and crimes control policies, strategic plans and operations.⁵⁹⁰ Furthermore, the ability of a force to disseminate appropriate information about crime patterns and trends, police efforts and handicaps at promoting crime prevention and control will affect police-public relations, public support for police as well as police efficiency. The Nigeria Police Force has continued to neglect this critical area, resulting in operational strategies being dependent on guesses instead of science or systematically produced and acquired knowledge.

(d) Personality of Police Personnel

The personality of a police officer exercises influence on his or her behaviour, performance and relationship with the public.⁵⁹¹ This is the reason why in many societies, potential recruits are subjected to a number of psychological and other tests with a view to determining their emotional stability and social relation competence. The Police Service Commission and the Nigeria Police Force need to review the recruitment process in order to ensure that only those that can meet the challenges of police work in Nigeria, at present and in the near future are recruited. It will be a waste to recruit an individual who do not possess adequate academic qualification, strong emotional and moral qualities and a patriotic commitment to Nigeria, in an age or era characterized by computer crimes, sophisticated and technology assisted financial crimes, piracy, terrorism and espionage.

(e) Police Culture

A constellation of structural, institutional and personality factors create what has been variously referred to as police culture. Police 'working' and culture result from the elements of

⁵⁹⁰ Rotimi K, 'Local Police in Western Nigeria: End of an Era in Policing in Nigeria' in Tamuno, Bashir, Alemika and Akano (editions) *Policing in Nigeria; Past, Present and Future* (Malthouse Press Limited 1991).

⁵⁹¹ Ibid.

police-work danger, authority and isolation.⁵⁹² Police work breeds solidarity and occupational pathology characterized by ‘perception of the public as uncooperative, unsupportive and antagonistic toward the police. In Nigeria, this engenders a tendency by the police to protect each other’s criminality and misconducts. As a result, the integrity of the police is undermined and a culture of impunity is thereby entrenched.

3.1.2 Major Challenges of Nigerian Police and Criminal Justice System

3.1.2.1 Brutality and Extra-Judicial Killings

The Nigeria Police have been accused variously of brutality and extra-judicial killings.⁵⁹³ Most of these incidents go uninvestigated and unpunished because the police in doing these acts exploits public anger at the high crime rates in the country to justify their actions claiming the victim was an armed robber killed in a shootout or while trying to escape police custody.⁵⁹⁴ Investigations are rarely carried out. When investigations do take place, they do not comply with international standards while the others who are suspected of extrajudicial executions are never punished.⁵⁹⁵ Police usually deny detainees of their legal rights to lawyers. Rather they are detained for weeks or months in police custody before they are charged and brought before a court. Suspects are usually executed particularly when they cannot offer bribe. This situation is made worse by the inability of most families to pay for a lawyer or court fees.⁵⁹⁶ Brutality and extra-judicial killings by the Police led to nationwide protest by the Nigerian youth in the month of November 2020 requesting for the disbandment of the Special Anti-Robbery Squad known as SARs. The said Protest forced the section of the Police to be scrapped by the Inspector General of Police.

3.1.2.2 Disobeying Court Order and Non-Execution of Court’s Judgment

The Nigeria Police has also been accused of selective execution of court judgment.⁵⁹⁷ This is a

⁵⁹² Ibid

⁵⁹³ See a report released by the *Bureau of Democracy, Human Rights and Labour*, which is under the United States Department of State released on Monday, February 28, 2005 and obtained on Tuesday, March 8, 2005 from the Public Affairs Section of the U.S Embassy in Lagos (The report on Nigeria titled’’ Country Reports on Human Rights Practices-2004’’

⁵⁹⁴ Police Force Order 237 Permits Officers to Shoot Suspects and Detainees Who Attempt to Escape or Avoid Arrest. In Practice, its Lets the Police Get Away with Murder.

⁵⁹⁵ E.E O. Alemika ‘‘Policing and Perception of Police in Nigeria’’ *Police Studies* 11 (4), 161-176 (1998)

⁵⁹⁶ E.E O. Alemika, ‘Police, Policing and Rule of Law in Transitional Countries’ in Lone Lindholt, Paulo de Mesquita Neto Danny Titus and E. Ethanibi, E.E O. Alemika (eds) *Human Right and the Police in Transitional Countries*, the Hafue: Kluwer Law International (2003)

⁵⁹⁷ E. Onwubiko, *The Nigeria Police and Judiciary; Friend or Foe*; the Guardian (Sunday July 2004) at 38

product of lack of professionalism which in turn is birthed by poor recruitment policy. All these eventually affect the quality of manpower and the training administered and engenders a general atmosphere of indiscipline.⁵⁹⁸

3.1.2.3 Police Corruption

A major contemporary issue of regular discussion in relations to policing in Nigeria is the extent of corruption. There are many competing definitions of police corruption. The term has been used to describe many activities such as bribery, brutality, fabrication and destruction of evidence and nepotism.⁵⁹⁹ Dantzker views police corruption as the misuse of authority by the police acting officially to fulfill personal needs or want. According to him, for a corrupt act to occur, three distinct elements must be present (a) Misuse of authority; (b) Misuse of official capacity; and (c) Misuse of personal attainment.⁶⁰⁰ In the word of Onwubiko, forms or types of corruption include:

improper political influence; acceptance of gratuities or bribes in exchange for non-enforcement of laws..... particularly those relating to gambling robbery, traffic offenses, prostitution and liquor offences, which are often extensively interconnected with organized crime; the fixing of traffic tickets; minor thefts; and occasional burglaries.⁶⁰¹

A more extensive list of forms of police corruption has been identified, they include:⁶⁰² Favouritism, which although is committed for a form of gain that is not materially tangible, nevertheless the actions do result in clearly identifiable benefit for the policeman in question. Acts of favouritism involve the misuse of police discretionary power, such as allowing a person to avoid the consequences of illegal acts.⁶⁰³ Bribery is the most common example of police corruption. It involves the payment of money or some other material good in return for protection from law enforcement. Most of the acts of bribery are similar to acts of favouritism except that the former result in materially tangible gain.⁶⁰⁴ Extortion is said to be a form of bribery, but it involves a more aggressive pursuit of corrupt money, in which the police use their powers to create opportunities for corrupt gain. Kickbacks relate in general to the more

⁵⁹⁸ Ibid

⁵⁹⁹ Tim Newburn, *Criminology* (Taylor and Francis, 2007)

⁶⁰⁰ Mark L. Dantzker *Understanding Today's Police* (Prince-Hall) P 157

⁶⁰¹ E Onwubiko (n 58)

⁶⁰² T. Sayed, and D. Bruce, 'Inside and Outside Boundaries of Police Corruption' (African Security Review, Vol. 7, No. 2 1998)

⁶⁰³ Ibid

⁶⁰⁴ Ibid

administrative or bureaucratic sides of police work. They are usually in the form of giving favourable treatment in respect of the provision of a legitimate service, and they take place in interaction with workers in areas related to police function and responsibilities with members of the general public.⁶⁰⁵ Diversion of Police Resources involves the use of police resources and powers for private purpose.⁶⁰⁶ *Deceptive Practices* involve the employment of ‘deceptive’ illegitimate law enforcement ends, in order to fraudulently enhance the performance of either the police officer concerned or others, or to gain some special bonus and so on.⁶⁰⁷ Corruption in the Nigeria Police is pervasive; it is a continuing problem; and that it is found at all levels and ranks of the Nigeria Police Organization. What then are the causes of police corruption in Nigeria, or what factors influence the corruption? In the final analysis, there are many competing explanations for police corruption, including dishonest and faulty recruitment; faulty training and supervision; political influence; death of professional standards; society’s demands for illegal services; poor welfare and administration; and socialization of new recruits into corrupt practices.⁶⁰⁸

3.1.2.4 Human Rights Violation

Another problem of the police is human rights violations which include police brutality. A human right is defined as something which no one may be deprived of, without great affront to justice. Human rights include “those rights which are inherent in our nature and without which we cannot live as human beings”⁶⁰⁹ it means that there are certain deeds which should never be done, certain freedoms which should never be invaded, some things which are sacred in human relationships. In short, these rights are fundamental as spelt out in Chapter IV of the 1999 Constitution. Although the rights must be protected, they are not absolute, because the exigencies of state society or national survival might demand qualification or even abrogation of the rights as may be necessary in given circumstances.⁶¹⁰

⁶⁰⁵ Ibid

⁶⁰⁶ Ibid

⁶⁰⁷ Ibid

⁶⁰⁸ S. G. Ehindero “The Nigeria Police in National Security”, Lecture delivered at the National War College, 21-22 (26 January 2006)

⁶⁰⁹ M. Tabiu and Ladan, “Human Rights and Prison System in Nigeria” (1998) *National Human Rights Commission*, 9.

⁶¹⁰ C. E. Osita, *Human Rights in Africa; Some Selected Problems* (Macmillan, 1984) 5-6

3.1.2.5 The Police Power of Bail

The police power of bail is another area where the police has been found wanting. The police are empowered to arrest persons upon reasonable suspicion of their having committed a crime⁶¹¹ though there are situations where a person suspected of committing a crime might not be arrested, but issued a summons to appear in court. There are various statutory provisions giving the police the power to release arrested persons on bail. Generally, these provisions deal with two situations. The first situation is where investigations have not been completed and secondly where the investigations have been concluded. Despite the above, the police make arrest even where there are no reasonable grounds to do this and would refuse to admit to bail unless payment is made.⁶¹² Other challenges that prevent the Police from adequately carrying out their duties include the following:

(a) Inadequate or Obsolete Equipment

A visit to the police station would reveal the magnitude of this challenge ranging from dilapidated buildings, to insufficient office spaces within the building down to furniture, uniform and kits. It is a different matter altogether when the consideration shifts to patrol vehicles, communication facilities, equipment and computers. The Nigerian Police Force lack modern weapons needed to combat violent crimes compared to the superior weapons used by the criminals and that is why they mostly decline to respond to a distress call or arrive late at the scene after the crime has been completed and the suspects long gone.

(b) Inadequate Training

Most of the police officers are not well trained in the art of combating crimes, proper investigation of crimes, and what it entails in adequately questioning and interviewing a suspect. This has been a serious bane in the administration of police force in Nigeria, good training is necessary.

(c) Recruitment Process

Recruitment is a process of accepting potential applications for placement into specific job in an organization and this has been one of the major challenges affecting the Nigeria Police Force because at inception the Police Force does not accept the best in the society.

(d) Abuse of Statutory Power

The Police force has in most cases abuse their statutory powers, particularly the power of arrest. The police power of arrest is indeed wide and justifiable only on reasonable suspicion

⁶¹¹ CFRN 1999, s 35

⁶¹² I.E Okagbue, "Bail Reform in Nigeria" (NIAL/Caltop Nigeria, 1996) 14-15

that an offence is committed or likely to be committed. While the object is to ensure effective crime prevention and detection, there is an underlying assumption that the police would apply these powers judiciously. However, this has not been the case, the power of arrest has become the most abuse of police power.

(e) Poor Police Remuneration

This is another notable factor that has engendered awful delivery by police officers in performing their constitutional duties. There have been cases where senior police officers have deprived junior officers the right of increment in salary.

(f) Inadequate Manpower

The Nigerian Police in the modern age seem to be handicapped in the face of current realities. It has been noticed that despite the teeming police personnel, the force is still bereft of manpower in certain quotas. There have been situations in which the police complain of shortage of staff when issues are reported to them.

4.0 Conclusion

The police play a vital role in the administration of justice. In fact, one wonders what the polity would be without the police. The role of the police which is predicated on constitutional and statutory provisions, include the maintenance of law and order through the prevention and detection of crime, apprehension of offenders, the investigation of persons alleged to have committed an offence as well as through the exercise of the power to grant bail to suspects under police custody. The police also participate positively in the administration of justice by conducting prosecutions as well as defending police officers facing trials in court. Furthermore, the police are engaged in the execution or enforcement of court orders and judgments. In doing so, they enhance the honour, respect and integrity accorded the court by compelling the performance and obedience to orders made by the court. It can therefore be said without equivocation that no criminal justice system can operate effectively without the participation of the police. This is so even with the obvious and flagrant committed by members of the police force. It goes without saying that the Nigeria Police have been striving to maintain peace, order and good governance over the years, but they are seriously saddled with a lot of challenges. The Nigerian Criminal administration of justice system is besieged by a host of challenges among which are poor and ineffective criminal investigations. Though with the introduction of Administration of Criminal Justice Act 2015, some measures have

been introduced to ensure speedy dispensation of criminal cases in court, the provision of section 1 of Administration of Criminal Justice Act summarized the object of the whole law. Delay in the duplication of files by the Police to the Ministry also serves as a clog to speedy dispensation of justice. On so many occasions, the suspect can be in the custody for more than three years and yet information will not be filed at an appropriate court which is clothed with jurisdiction to entertain the suit. The problem of delay in the prosecution of a suspect leads to the problem of congestion/ overcrowding of inmates on awaiting trial in the correctional or custodial homes. The government of the day is very much concerned with the issues of security. The general public are anxious with lack of efficient maintenance of law and order and blame both the police and the government for not providing adequate security for the protection of lives and properties. Although the government are trying their best to satisfy these yearnings by embarking on several reforms of the Police Force but, it appears as if the problems are overwhelming. The way forward is to ensure that the Police, civil society, government and other stakeholders to put all hands on deck to address all matters of security because the maintenance of law, peace and order lies on everybody in the country

5.0 Recommendations

While finding a solution to the problems of funding for the police, government must also devise ways of dealing with the challenges of the police force and corrupt tendencies of the leadership of the organization. The following recommendations are hereby proffered as regards to challenges to the administration of criminal justice by the Nigeria Police Force listed above:

(i) There is need to amend the provision of Section 215(3) and (4) of the 1999 Constitution of Nigeria. These provisions relate to the powers of the Federal Government regarding the control of the police relative the state governments. These provisions have been a source of controversy as well as conflict between the governors and the federal police authority. The provisions of Section 215(4) of the 1999 Constitution of Federal Republic of Nigeria (as altered) (CFRN 1999) appear to undermine the powers and integrity of the state governor relative to the management of the police. Thus, it is recommended that the provision be amended to confer on the state governors being the chief security officers for their respective states power to be able to give directive to the Nigeria police for the contingent in their states and such directives to be promptly carried out without seeking approval from

either the president or ministers.

(ii) The police should be properly equipped with modern and sophisticated equipment. Government must provide good condition of service to the police, this includes recruitment of adequate number of policemen, attractive salary and accommodation. This will improve the image of the police and thereby boosting their morale.

The police force should be properly equipped with modern and refined equipment. The government should provide good condition of service to the police; this should improve the image of the police and thereby boost their morale. The government should provide adequate logistics means that would contribute to the effective and efficient delivery of the police service.

(iii) Government is expected to provide good condition of service to the police force and this include attractive salary. This gives them the morale to carry out their duties well and to an extent would curb the menace of bribery.

(iv) All the security agencies in Nigeria particularly the police, the armed forces, state security service and so on must cooperate and complement other in the administration of justice in Nigeria. To facilitate this, a coordinating mechanism should be put in place that should encourage sharing of security information, tips and intelligence. This mechanism will equally stamp out rivalry which presently is one feature amongst security agencies in Nigeria. Once this is achieved, law enforcement agencies in Nigeria rather than being reactive will become more preventive in their approach as obtainable in other advanced jurisdictions

(v) Finally, improving the quality of the Nigerian police in the administration and provision of security cannot be resolved by proliferation of ad hoc committee, panels or task force, there is no alternative to putting in place a permanent mechanism as have been recommended herein to address the challenges of law enforcement and administration justice in Nigeria.

INTERNATIONAL LAW AND HUMAN RIGHTS

Malomo F. Toluwalase*
Oridamilola A. Ijiwoye**
Oluwatoyin Omoniyi***

Abstract

Human rights is a well-known concept whose foundation has been laid from the very beginning. Ever since the dawn of time, the rights of man have evolved alongside man and only become more significant. The formulation of treaties and frameworks to protect and enforce these rights has also become a necessity. Law plays a huge role in the protection and enforcement of these rights within the domestic setting. International law allows for these rights to be safeguarded on a larger scale that is between nation states. This paper redefines the concept of human rights and considers through an in-depth analysis what this concept is, how it should be seen and why it should be protected. It enlightens our minds on the role of international law within the realm of human rights, its enforcement and protection. It delves into the history of human rights and makes us see how it arrived at where it is today. It will also shed light on how human rights are seen and treated in regional and municipal localities. This paper will majorly lay emphasis on the impact of international law on human rights and how much it has affected human rights positively in our world today. Human rights is a major subject of international discuss and its enforcement, an issue of major concern internationally. This paper treats in detail every aspect of international law's concern with human rights and makes it fully known how much it is concerned with the international subject.

Keywords: Human rights, Treaties, International Law, Nation states

1.0 Introduction

Since the dawn of time, law has always existed, either in its crude form or in the refined form. It has always been used to ensure that there is peace, order and compliance to rules and regulations. Law constitutes a set of rules prescribing acceptable behavior and mirroring the culture and ideologies of the society in which it is found. Law, whether municipal or international law is meant to regulate conduct, among others.⁶¹³ International law is classified into public and private international law, also known as conflict of laws. Public international law is concerned with the interaction between states and other international actors while private international law is concerned with handling disputes between people or organizations across national borders.⁶¹⁴ Public international law lays emphasis on subjects such as states sovereignty, human rights and international trade agreements whereas private international law deals majorly with subject such

*** The authors are of the Faculty of Law, Redeemer's University, Ede, Nigeria

¹ Malcolm N. Shaw, International Law (Sixth Edition, Cambridge University Press 2008).

² Cornell Law School, 'International law' https://www.law.cornell.edu/wex/international_law# accessed 22 July 2025 Legal Information Institute.

as contract disputes, family law and property rights involving several jurisdictions.⁶¹⁵ International law is seen in various sources such as international treaties, customs and universal legal principles. International law plays an important role in the protection and promotion of human rights. Treaties and frameworks have been adopted and ratified by different countries to ensure that the rights of people all over the world are safeguarded.

Human rights refer to the rights inherent to human beings, regardless of their color, sex, nationality, ethnicity, language, religion or any other status are entitled to. These rights are inherently invested in human beings simply because they exist. The only condition needed to inherit these rights is to be human. Everyone, so long as they are human should not be denied these rights. These rights are not discriminatory in that only a select few are allowed to enjoy them. They are universal, that is they apply to every human that exists in the world. This includes the right to freedom from slavery and torture, the right to life and liberty, the freedom of speech and opinion and the right to employment and education. Everyone is entitled to these rights, without discrimination.⁶¹⁶

The development of international human rights law has been influenced by many factors, including the evils that took place during the World War II and the need to create a system of accountability for states that violates the tenets of the rights of their citizens. The United Nations has been instrumental in the creation and enforcement of international human rights standards, which states parties are expected to abide by. Human Rights Law refers to the legal framework that safeguards the fundamental freedoms and rights that every person, regardless of background or status is entitled to. It is what ensures that people enjoy their rights without hindrances. It is also what enforces sanctions and punishments against people who abuse and violate the rights of others. This law also governs the conduct of nations in the treatment of both citizens and foreigners, even criminals who are either extradited to their or are in their country as immigrants. Human Rights Law imposes a duty on governments to uphold, defend and implement these rights while still acknowledging that people have a responsibility to exercise their own rights. These rights, which include civil, cultural, economic, political and social rights, are governed by

³ Ibid.

⁴ United Nations, 'Human Rights' <https://www.un.org/en/global-issues/human-rights> accessed 24 July 2025.

international human rights law. This law was created by the United Nations and other international bodies⁶¹⁷.

1.1 Historical Background on the Evolution of Human Rights in International Law

Human Rights in international law has evolved significantly over the years, transitioning from early influences such as philosophical and theological ideas and the institution of certain frameworks such as the Magna Carta and the English Bill of Rights which laid the foundation for the frameworks, treaties and institutions we have today⁶¹⁸. Some of the key developments within this evolution include:

a. The Universal Declaration of Human Rights (UDHR): This is deemed to have been the foundation of human rights internationally. It was ratified in 1948 and has served as the model for numerous legally enforceable international human rights agreements. It still serves as an inspiration within the areas of addressing injustices, resolving conflicts and supporting oppressed societies. It stands for the global understanding that everyone is born free and equal in dignity and rights, and that fundamental freedoms and rights are inalienable and equally applicable to all people. On December 10, 1948, the international community pledged to protect justice and dignity for all of us, regardless of our nationality, place of residence, gender, national or ethnic origin, race, religion, language or any other status.⁶¹⁹

b. International Human Rights Treaties: Succeeding the UDHR, various treaties such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1951 Refugee Convention, and the 1979 Convention on the Elimination of all forms of Discrimination against Women were ratified to cater for certain rights and vulnerable groups of people.⁶²⁰

c. International and Regional Bodies: International organizations such as the International Criminal Court and the Human Rights Council have very essential roles to play within the promotion of accountability and protection of human rights.⁶²¹ Regional Organizations such as the

⁵ United Nations, 'The Foundation of International Human Rights Law' <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law> accessed 29 July 2025

⁶ S.V Veerichetty, 'The Evolution of Human Rights Protections in International Law: A Historical and Contemporary Analysis' International Journal of Creative Research Thoughts (IJCRT) <https://www.ijcrt.org/papers/IJCRT2407709.pdf> accessed 24 July 2025

⁷ United Nations, 'The Foundation of International Human Rights Law' <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law> accessed 24 July 2025

⁸ Human Rights Commission, 'Human Rights Treaties' <https://www.humanrightscommission.ky/human-rights-treaties> accessed 24 July 2025

⁹ United Nations Human Rights Council, <https://www.ohchr.org/en/hrbodies/hrc/about-council> accessed 24 July 2025

African Commission on Human and Peoples' Rights also play a very essential role in the enforcement of human rights in Africa.⁶²²

International human rights is continually evolving to confront emerging concerns such as economic injustice, climate change, and the rights of particular groups, including individuals with disabilities⁶²³. At both the national and international levels, initiatives are also being made to enhance the application and enforcement of human rights legislation.⁶²⁴ Discussions are also being made on the universality of human rights and how to adapt their application to cultural diversity.⁶²⁵

2.0 Conceptual and Theoretical Framework

2.1 Definition and Explanation of Key Concepts

a. Human Rights: refer to the rights naturally invested in human beings, regardless of their colour, sex, nationality, ethnicity, language, religion or any other status. This includes the right to freedom from slavery and torture, the right to life and liberty, the freedom of speech and opinion and the right to employment and education. Everyone is entitled to these rights and this should be without discrimination.⁶²⁶ These rights are classified into two groups; Civil and Political Rights which include the right to life, liberty and personal security; freedom of mind, conscience, and religion; the freedom of opinion and speech; the right to a fair trial; the freedom from slavery and torture and the right to take part in the political process and Economic, Social and Cultural Rights which include; the right to have education, the right to health, the right to an adequate standard of living and the right to work and favorable conditions of work.⁶²⁷

b. State Sovereignty: Within the realm of international law, state sovereignty often refers to a state's absolute power within its borders and its autonomy abroad. It signifies a state's right to rule itself without external intervention and to exert control over its own affairs. This entails possessing a government, a permanent population, a defined area, and the ability to communicate

¹⁰ International and Regional Organizations, <https://www.humanrights.dk/where-we-work/partners/international-regional-organisations> accessed 24 July 2025.

¹¹ Vusal Mehdiyev, 'The Intersection of International and Human Rights' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5061879 accessed 24 July 2025.

¹² Muhammad Sadiq Kakar, 'Balancing Cultural Relativism and Universal Human Rights: The Case of Islamic Law' https://www.researchgate.net/publication/38445180_Balancing_Cultural_Relativism_and_Universal_Human-Rights_The_Case_of_Islamic_Law accessed 24 July 2025.

¹³ Muhammad Sadiq Kakar, 'Balancing Cultural Relativism and Universal Human Rights: The Case of Islamic Law' https://www.researchgate.net/publication/38445180_Balancing_Cultural_Relativism_and_Universal_Human-Rights_The_Case_of_Islamic_Law accessed 24 July 2025.

¹⁴ United Nations, 'Human Rights' <https://www.un.org/en/global-issues/human-rights> accessed 24 July 2025

¹⁵ Ibid.

with other states.⁶²⁸ Several scholars have defined sovereignty in different ways. Jean Bodin defined sovereignty as ‘the supreme power over citizens and subjects unrestrained by law.’⁶²⁹ Duguit saw sovereignty as the commanding power of the state, that is, the will of the nation organized in the state, the right to give unconditional orders to all individuals in the territory of the state.⁶³⁰ Grotius perspective of sovereignty leaned more towards the sovereign being the emphasis of sovereignty. He defined the term as the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden.⁶³¹

c. Jus Cogens: This is known as the peremptory norm, a fundamental and overriding rule of international law. It is a Latin phrase that means ‘compelling law’. Its nature is to be absolute and this means that there can be no defense for an act that is committed against jus cogens. These norms, however are obtained from constantly evolving social and political attitudes and major case laws and are not determined or controlled by any superior body.⁶³²

d. Customary International Law: This refers to international duties stemming from the continuous and general practice of states which has become law, rather than from formal written agreements like treaties.⁶³³ The key elements of customary international law are; State Practice which is seen as the actual behavior of states, their actions, statements and omissions which must be common, reliable and indicative of a state-to-state practice and *Opinio Juris* which posits the fact that States view that their actions are required by law, not just as a matter of policy or civility. States need to feel that their actions are compliant with the law⁶³⁴.

2.2 Theories Promoting Human Rights

Various theories make an attempt to clarify the origins and rationale of human rights. These theories are stated and explained below:

a. Natural Law Theory: According to this theory, human rights are fundamental to our nature as rational beings and were not invented by humans. It makes the case that these rights are universal,

¹⁶ M. Coleman, ‘Sovereignty’ International Encyclopedia of Human Geography, 2009 <https://www.science-direct.com/topics/social-sciences/state-sovereignty> accessed 25 July 2025

¹⁷ Sovereignty <https://law.uok.edu.in/Files/5ce6c765-co13-446c-b6ac-b9de496f8751/Custom/Concept%20of%20Sovereignty.pdf> accessed 25 July 2025

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Muskaan Garg, ‘Doctrine of Jus Cogens under International Law’ <https://blog.ipleaders.in/jus-cogens> accessed 25 July 2025

²¹ Cornell Law School, ‘Customary International Law’ https://www.law.cornell.edu/wex/customary_international_law accessed 25 July 2025

²² Ibid.

inalienable and discoverable by reason. Theorists of this school of law frequently base their conception of human rights on ideas such as the common good, human dignity, and the intrinsic value of every person.⁶³⁵ Thomas Aquinas, one of the widely known proponents of the natural law theory was one who combined natural law and Christian theology. Other theorists like John Finnis and some modern proponents of the natural law theory highlight the importance of fundamental values like friendship, life and knowledge as the cornerstones of human rights.⁶³⁶

b. Legal Positivism: As opposed to natural law, this theory emphasizes the legitimacy of laws as they are passed and upheld by a sovereign authority. Positivists contend that laws, not innate moral precepts, are the source of rights. In defining and defending human rights, they stress the significance of formal legal sources like constitutions, laws and treaties. It is a more practical approach that emphasizes the actual implementation and upholding of rights within a legal system. The detractors of legal positivism contend that if laws are legally enacted, it may result in the justification of unfair laws.⁶³⁷

c. Liberal Theory: This theory offers a solid basis for understanding human rights because of its emphasis on individual liberty, autonomy, and limited government. Liberals contend that people have inalienable rights that should not be violated by the state. These rights frequently include the freedom to express oneself, practice one's religion, and take part in political activities. Liberalism also stresses the value of individual interest protection and equality before the law. Although, liberalism is frequently linked to natural rights, positivism, which recognizes and defends rights through legal frameworks, can also be consistent with liberalism.⁶³⁸

2.3 Relationship between International Law and State Obligations

States are required by international human rights law to uphold, defend, and implement human rights. Customary international law or the ratification of international human rights treaties bind states to these duties. States are required by these commitment to enact laws required by these commitments to enact laws and policies that respect human rights norms and to make sure that

²³ Anthony J. Lisska, 'Human Rights and Natural Law' <https://academic.oup.com/book/12162/chapter-abstract/161599852?redirectedFrom=fulltext> accessed 25 July 2025.

²⁴ Andrew Heard, 'Human Rights: Chimeras in Sheep's Clothing' <https://www.sfu.ca/~aheard/intro.html> accessed 25 July 2025.

²⁵ Ludovic Hennebel and Helene Tigroudja, 'Theoretical Elements of International Human Rights Law' Cambridge University Press (10 April 2025) <https://www.cambridge.org/core/books/abs/international-human-rights-law/theoretical-elements-of-international-human-rights-law/81931E40D3B1348B9357522F07A3D8C> accessed 25 July 2025.

²⁶ John Finnis, 'Liberalism and Natural Law Theory' https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1533&context=law_faculty_scholarship# accessed 25 July 2025.

these norms are respected inside their borders.⁶³⁹ Key elements of the relationship between international law and state obligations include:

a. **Treaties and Declarations:** Treaties (such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and declarations (such as the Universal Declaration of Human Rights) are the main sources of international human rights legislation.⁶⁴⁰

b. **State Obligations:** States are required under these documents to uphold human rights, which means they cannot infringe upon them. They also have a duty to defend human rights, which entails taking action to stop non-state actors from violating them. States also have an obligation to uphold human rights, which entails actively creating the conditions required for individuals to exercise their rights.⁶⁴¹

c. **Compliance and Monitoring:** International human rights law uses treaty bodies, regional human rights courts, and the United Nations human rights system as tools to keep an eye on state compliance. These systems have the ability to examine state-submitted information, look into claims of infractions, and make suggestions.⁶⁴²

Sources of International Human Rights Law

a. UN Charter

This is one of the main sources of international human rights law. It requires member states to respect fundamental freedoms and human rights for all people, and it makes the advancement and defense of human rights one of the major goals of the UN. The foundation of the international human rights system is the Charter's emphasis on human rights and the Universal Declaration of Human Rights (UDHR).⁶⁴³

²⁷ United Nations, 'The Foundation of International Human Rights Law' <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law> accessed 25 July 2025

²⁸ Vusal Mehdiyev, 'The Intersection of International and Human Rights' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5061879 accessed 25 July 2025

²⁹ Mark Gibney, 'State Apologies and International Law' *Global Studies Quarterly*, Volume 2, Issue 4, October 2022 <https://academic.oup.com/isagsq/article/2/4/ksac058/6812859> accessed 25 July 2025

³⁰ Paul V.I. Sidlawinde Karenga, 'Implementation of Human Rights Obligations in Conjunction with the Palermo Protocol' https://link.springer.com/chapter/10.1007/978-3-030-88120-7_9 accessed 25 July 2025

³¹ United Nations, 'Protect Human Rights' <https://www.un.org/en/ourwork/protect-human-rights> accessed 25 July 2025

b. General Assembly Resolutions

Resolutions of the General Assembly can be a major source of international human rights law, even though they are not legally binding in and of themselves. They are able to articulate new principles of international law, offer authoritative interpretations of the UN Charter, and aid in the development of customary international law.⁶⁴⁴

International treaties and Conventions

a. Universal Declaration of Human Rights (UDHR)

This is deemed to have been the foundation of human rights internationally. It was ratified in 1948 and has served as the model for numerous legally enforceable international human rights agreements. It still serves as an inspiration within the areas of addressing injustices, resolving conflicts and supporting oppressed societies. It stands for the global understanding that everyone is born free and equal in dignity and rights, and that fundamental freedoms and rights are inalienable and equally applicable to all people. On December 10, 1948, the international community pledged to protect justice and dignity for all of us, regardless of our nationality, place of residence, gender, national or ethnic origin, race, religion, language or any other status.⁶⁴⁵

b. International Covenant on Civil and Political Rights

This is a multilateral treaty adopted by the United Nations in 1966. It binds countries to uphold people's civil and political rights, such as the freedom of speech, the right to a fair trial, the freedom of religion, and the right to life. It is a legally enforceable document that seeks to safeguard essential liberties and fundamental human rights.⁶⁴⁶

c. International Covenant on Economic, Social and Cultural Rights

This is an important international human rights treaty that describes people's economic, social, and cultural rights. It was adopted by the United Nations in 1966 and became operative in 1976. This treaty, alongside the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, forms the International Bill of Human Rights.⁶⁴⁷

³² Ahmad Alsharqawi, Ahmad Bani Hamdan, Moh'd Abu Anzeh, 'The Role of General Assembly Resolutions to the Development of International Law' <https://www.abacademies.org/articles/the-role-of-general-assembly-resolutions-to-the-development-of-international-law> accessed 25 July 2025

³³ United Nations, 'The Foundation of International Human Rights Law' <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law> accessed 24 July 2025

³⁴ Sarah Joseph, Melissa Castan, 'The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary (3rd Edition)' <https://academic.oup.com/oxford-law-pro/book/57225/chapter-abstract/474861996?redirectedFrom=fulltext> accessed 25 July 2025

³⁵ Council of Europe Portal, 'International Covenant on Economic, Social and Cultural Rights' <https://www.coe.int/en/web/compass/international-covenant-on-economic-social-and-cultural-rights> accessed 25 July 2025

d. International and Regional Bodies

International organizations such as the International Criminal Court and the Human Rights Council have essential roles to play within the promotion of accountability and protection of human rights.⁶⁴⁸ Regional Organizations such as the African Commission on Human and Peoples' Rights also play a very essential role in the enforcement of human rights in Africa.⁶⁴⁹

e. Customary International Law and General Principles

Customary International Law refers to international duties stemming from the continuous and general practice of states which has become law, rather than from formal written agreements like treaties.⁶⁵⁰ The key elements of customary international law are; State Practice which is seen as the actual behaviour of states, their actions, statements and omissions which must be common, reliable and indicative of a state-to-state practice and *Opinio Juris* which posits the fact that States view that their actions are required by law, not just as a matter of policy or civility. States need to feel that their actions are compliant with the law.⁶⁵¹

f. Judicial Decisions and Writings of Legal Scholars

These are not primary sources of law like treaties or customs but are also seen as essential and for the purpose of formulating and interpreting international human rights law. They can also have an impact on the development of new norms and provide insights into how current standards are applied and interpreted.⁶⁵²

4.0 International Institutions and Enforcement Mechanisms

4.1 United Nations Human Rights Council

This is a body of the United Nations that has been dedicated to the promotion and safeguarding of human rights around the world. Its composition is made up of 47 member states elected by the United Nations General Assembly. It makes recommendations to member states and deals with

³⁶ United Nations Human Rights Council, <https://www.ohchr.org/en/hrbodies/hrc/about-council> accessed 24 July 2025

³⁷ International and Regional Organizations, <https://www.humanrights.dk/where-we-work/partners/international-regional-organisations> accessed 24 July 2025

³⁸ Cornell Law School, 'Customary International Law' https://www.law.cornell.edu/wex/customary_international_law accessed 25 July 2025

³⁹ Ibid.

⁴⁰ Ludovic Hennebel and Helene Tigroudja, 'Judicial Decisions as a Primary Source of International Human Rights Law' <https://www.cambridge.org/core/books/abs/international-human-rights-law/judicial-decisions-as-a-primary-source-of-international-human-rights-law/267725A4C8A72E0AD-C5C895A4C8A7E71B152> accessed 25 July 2025

human rights abuses, especially flagrant and persistent abuses. It convenes at least three times a year in Geneva, Switzerland⁶⁵³.

4.2 Office of the High Commissioner for Human Rights

This is one of the leading United Nations bodies on human rights. It stands for global dedication to advancing and defending the entire spectrum of freedoms and human rights outlined in the Universal Declaration of Human Rights. The Office and the High Commissioner both play a special role in:

- a. Safeguarding and promoting all human rights
- b. Helping to empower people by engaging in research, education and advocacy activities that contribute to the increased awareness and engagement by the international community and the public on human rights issues.
- c. Assisting Governments by helping prevent abuses and contributing to the defusing of situations that can lead to conflicts. This is done through field presences.
- d. Injecting a human rights perspective into all UN programmes to ensure that the three pillars of the UN; peace and security, developments and human rights are interrelated and mutually reinforced.

4.3 Treaty Monitoring Bodies

These are independent expert committees that oversee how state parties carry out international human rights accords. The CEDAW committee, which oversees the Convention on the Elimination of All Forms of Discrimination Against Women, and the Human Rights Committee, which oversees the International Covenant on Civil and Political Rights are two examples. These organizations play a very vital role in advancing and defending human rights by examining state reports, making recommendations and handling individual complaints⁶⁵⁴.

5.0 Challenges and Limitations of International Human Rights Law

a.State Sovereignty vs Universal Human Rights

These two represent two competing, yet intertwined, principles in international law and relations. Sovereignty grants a state the exclusive right to govern itself within its territory, free from external interference while universal human rights are inherent rights that belong to every

⁴¹ United Nations Human Rights Council, 'A Practical Guide for NGO Participants' Policy and Methodological Publications <https://www.ohchr.org/en/publications/policy-and-methodological-publications/united-nations-human-rights-council-practical> accessed 25 July 2025

⁴² United Nations Human Rights Office of the High Commissioner, 'Treaty Bodies' <https://www.ohchr.org/en/treaty-bodies#> accessed 25 July 2025

individual regardless of nationality or location. While sovereignty is often seen as a foundation of international order, it can also be invoked to justify human rights abuses within a state's borders, creating a tension between the two principles.⁶⁵⁵

b. Political Influence on International bodies

This is a complex and multifaceted issue. States with superior authority often exert significant influence through formal and informal means while other member states benefit from the expertise and collective action offered by these organizations. International organizations can also be used as tools to influence domestic politics, and conversely, domestic political issues can drive a nation's engagement with international bodies.⁶⁵⁶

c. Reservations and Derogations in Treaties

The universality and efficient application of international human rights law can be seriously hampered by reservations and derogations in human rights treaties. Reservations, which are unilateral declarations that alter how a treaty's provisions are applied, and derogations, which permit the temporary suspension of specific rights under particular conditions, can compromise the goal and intent of the treaty and lead to disparities in how human rights are protected in various states⁶⁵⁷

d. Resource Constraints and Lack of Compliance Mechanisms

These cause significant challenges to the execution of International Human Rights Law by hampering the ability of states and international organizations to safeguard human rights effectively, resulting in consistent violations and impunity. Some of these resource constraints include; financial limitations, capacity building and limited access to justice while lack of compliance mechanisms include weak enforcement, limited jurisdiction, state sovereignty and political obstacles

Interplay between International Humanitarian Law and Human Rights Law

6.1 Distinctions and Overlaps

These two concepts are distinct yet complementary and they both apply during armed conflicts. International Humanitarian Law primarily regulates the conduct of hostilities and seeks to limit

⁴³ Jack Donnelly, 'State Sovereignty and Human Rights' <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article> accessed 25 July 2025

⁴⁴ Adebimpe Saheed Fagbemi, PhD, Bimbo Ogunbanjo, PhD, Abiodun Ghali Issa, 'Domestic Politics and the Influence of International Institutions' <https://afropolitanjournals.com/index.php/ajhcer/article/view/412> accessed 25 July 2025

⁴⁵ Eric Neumayer, 'Qualified Ratification: Explaining Reservations to International Human Rights Treaties' The University of Chicago Press Journals

the effects of armed conflicts on civilians and non-combatants while International Human Rights Law applies at all times, including during armed conflict, and protects individuals from human rights violations by state actors⁶⁵⁸.

6.2 Legal frameworks in Peace Time

- a. Domestic Law: This includes constitutions, statutes, regulations and common law principles that regulate the daily lives of citizens and the functioning of the state⁶⁵⁹.
- b. International Law: These are treaties and agreements between states that cater for different parts of international relations, including trade, human rights and the protection of the environment⁶⁶⁰.
- c. Rule of Law: This is a very essential principle applied in times of peace, making provision for everyone to be subject to and held accountable under the law⁶⁶¹.

6.2.2 Legal Frameworks in Times of Armed Conflict

- a. Protection of Civilians: International Humanitarian Law ensures that civilians and civilian objects are protected from the harsh effects of military operations⁶⁶².
- b. Distinction: In armed conflict situations, a clear distinction should be made between combatants and civilians and only military objectives should be targeted⁶⁶³.
- c. Proportionality: Military operations must be reasonable, which means that the damage done to civilians and civilian property must not be disproportionate to the expected military benefit⁶⁶⁴.
- d. Necessity: In armed conflicts, only the type and quantity of force required to vanquish the adversary is allowed⁶⁶⁵.

⁴⁷ International Committee of the Red Cross, 'Human Rights Law' <https://www.icrc.org/en/law-and-policy/human-rights-law> accessed 25 July 2025

⁴⁸ Richard J. Wilson, 'Procedural Safeguards for the Defence in International Human Rights Law' https://brill.com/display/book/edcoll/9789047431176/Bej.9781571053312.i-900_003.xml accessed 25 July 2025

⁴⁹ Nitya Lohiya, 'The Role of International Law in United Nations Peacekeeping Operations' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5083272 accessed 25 July 2025

⁵⁰ United Nations, 'Interactive Thematic Debate on the Rule of Law and Global Challenges' <https://www.un.org/en/ga/president/65/pdf/calendar/20110411-ruleoflaw.pdf#> accessed 25 July 2025

⁵¹ Huma Haider, 'International Legal Frameworks for Humanitarian Action' <https://gsdrc.org/topic-guides/international-legal-frameworks-for-humanitarian-action/concepts/overview-of-international-humanitarian-law> accessed 25 July 2025

⁵² Ibid.

⁵³ Huma Haider, 'International Legal Frameworks for Humanitarian Action' <https://gsdrc.org/topic-guides/international-legal-frameworks-for-humanitarian-action/concepts/overview-of-international-humanitarian-law> accessed 25 July 2025

⁵⁴ Ibid.

- e. Humane Treatment: Everyone, regardless of their role in the armed conflict must be treated humanely. This covers laws that prohibit cruel treatment, torture, and other cruel behaviors⁶⁶⁶.
- f. Specific Protections: Vulnerable groups such as women, children and prisoners of war, are granted particular protections under International Humanitarian Law⁶⁶⁷.
- g. Accountability: States are required by International Humanitarian Law to look into and bring charges against war crimes⁶⁶⁸.

6.3 Case Laws illustrating the Convergence of International Humanitarian Law and International Human Rights Law

6.3.1 Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory

Although the main focus of this decision was the legality of the barrier, it also applied IHRL principles such as the right to freedom of movement and the right to family life as well as IHL considerations about how hostilities should be conducted and how to protect civilians⁶⁶⁹.

6.3.2 Human Rights Committee, Report on Beit Hanoun:

The need to evaluate activities in light of both IHRL and IHL was highlighted in this study, which looked at suspected human rights abuses during a military operation in Beit Hanoun⁶⁷⁰.

6.3.3 UK, Serdar Mohammed: The UK'S court's consideration of IHRL obligations when applying IHL principles in the context of military operations was demonstrated in this case, which involved a UK citizen who was detained in Afghanistan⁶⁷¹.

6.3.4 ICJ, Democratic Republic of the Congo v. Uganda: This case concerned alleged IHL and IHRL violations that occurred during the DRC conflict. The ICJ discussed topics such as the applicability of IHRL during armed conflict and states' accountability for the actions of armed organizations under their jurisdiction⁶⁷².

⁵⁵ Huma Haider, 'International Legal Frameworks for Humanitarian Action' <https://gsdrc.org/topic-guides/international-legal-frameworks-for-humanitarian-action/concepts/overview-of-international-humanitarian-law> accessed 25 July 2025

⁵⁶ Ibid.

⁵⁷ Cordula Droegge, International Humanitarian Law and Peace: A brief overview <https://international-review.icrc.org/articles/international-humanitarian-law-and-peace-a-brief-overview-927> accessed 25 July 2025

⁵⁸ IHL and Human Rights, https://casebook.icrc.org/law/ihl-and-human-rights?afd_azwaf_tok accessed 25 June 2025

⁵⁹ IHL and Human Rights, https://casebook.icrc.org/law/ihl-and-human-rights?afd_azwaf_tok accessed 25 June 2025

⁶⁰ Ibid.

⁶¹ IHL and Human Rights, https://casebook.icrc.org/law/ihl-and-human-rights?afd_azwaf_tok accessed 25 June 2025

7.0 Emerging Trends and the Future of Human Rights in International Law

7.1 Climate Change and Environmental Rights

Since the full enjoyment of many human rights, such as the rights to food, water, sanitation, and health, depends on a safe, clean, and healthy and sustainable environment, climate change has a substantial impact on human rights. It is the duty of states to prevent predictable effects of climate change and to guarantee that those impacted, especially vulnerable groups, have access to treatments and adaptation strategies⁶⁷³.

7.2 Rights of LGBTQ+ persons and Gender-based Protection

These individuals who experience gender-based violence are entitled to the same human rights as every other person, not excluding protection from discrimination, violence and harassment. International human rights law recognizes sexual orientation and gender identity as protected characteristics, and states have a duty to promote and protect the human rights of all individuals, regardless of these factors⁶⁷⁴.

7.3 Digital rights and Freedom of Expression Online

The human rights that people have when utilizing their technologies are known as digital rights. One of the most important digital rights is freedom of expression online, which includes the ability to freely search for, receive, and share information and ideas on digital channels without excessive interference. International human rights documents such as the Universal Declaration of Human Rights recognize this right⁶⁷⁵. Other aspects of digital rights include; Access to the Internet, Privacy, Anonymity and Protection from Online Violence and Harassment.

7.4 Extraterritorial Application of Human Rights

This is known as the extent to which human rights' duties, typically outlined in treaties, extend to people living outside of a state's borders. There are situations where states will be held responsible for human rights abuses that took place outside of their borders, even though it is widely accepted that human rights only apply within a state's territorial jurisdiction. This brings up difficult issues about the reach of international human rights legislation⁶⁷⁶.

⁶² United Nations Office of the High Commissioner, 'Climate Change and Environment' <https://www.ohchr.org/en/topic/climate-change-and-environment> accessed 25 July 2025

⁶³ Welcome to the United Nations, 'LGBTQ+ people' <https://www.un.org/en/lgbtqi-people> accessed 25 July 2025

⁶⁴ Chaman Law Firm, 'Digital Rights and Freedom of Expression Online in Nigeria' <https://chamanlawfirm.com/digital-rights-and-freedom-of-expression> accessed 25 July 2025

⁶⁵ Gerd Oberleitner, 'The Extra-territorial Application of Human Rights: Functional Universality' Cambridge University Press <https://www.cambridge.org/core/books/abs/human-rights-in-armed-conflict/extraterritorial-application-of-human-rights-functional-universality> accessed 25 July 2025

8.0 Conclusion

The findings from this paper stem from a thorough research that has attempted to examine and analyze two distinct concepts and the nexus or connection between them. International law goes hand-in-hand or *pari passu* human rights. They are siamese twins that can never be separated. Although they are distinct in their own forms, they complement each other well and work best as a combination. International law has greatly been seen in the formation, existence and thriving of human rights. Human rights has also ensured greatly that citizens of the various states are protected regardless of their nationality.

International law is very essential in the protection of human rights as its legal frameworks establish a means or a method through which it can be enforced. It sets out basic civil, political, economic and social rights by creating a standard for all nations, commits to respecting, protecting and fulfilling the rights its established by ratifying treaties, monitors state compliance and provides mechanisms for addressing human rights violations through its established bodies and entities, promotes accountability, supports domestic legal systems, protects vulnerable groups and prevents conflicts.

9.0 Recommendations

Some recommendations for strengthening enforcement and cooperation among states include:

a. Strengthening Legal Frameworks

i Ratification and Implementation

States should ratify essential human rights treaties and include them into domestic law, ensuring consistent application and enforcement⁶⁷⁷.

ii Review and Reform:

The laws that aid in human rights being abused or violated should be examined and refined⁶⁷⁸.

iii National Human Rights Institutions:

There should be the establishment and strengthening of autonomous and efficient national human rights institutions to ensure that the monitoring, reporting and addressing of human rights issues are done.⁶⁷⁹

⁶⁶ United Nations Office of the High Commissioner, 'International Human Rights Law'

<https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> accessed 25 July 2025

⁶⁷ Ibid.

⁶⁸ United Nations Office of the High Commissioner, 'International Human Rights Law'

<https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> accessed 25 July 2025

b.Strengthening Institutions

i Independent Judiciary: To guarantee accountability and give victims of human rights abuses access to justice, an independent and unbiased court is very essential⁶⁸⁰.

ii. Civilian Control of Security Forces: To stop abuses and encourage accountability, it is essential to guarantee civilian authority over military and security forces⁶⁸¹.

iii Due Process: International norms for fairness, impartiality and due process should be followed in all court proceedings, civilian and military⁶⁸².

c.Fostering International Cooperation

i.Technical Assistance: International organizations should provide technical assistance and capacity building to states to help them fulfill their human rights obligations⁶⁸³.

ii. Cooperation and Collaboration: States should work together with international human rights mechanisms, such as the Universal Periodic Review, treaty bodies, and special procedures⁶⁸⁴.

iii Sanctions and Embargoes: In cases where there are serious and recurring human rights violations, sanctions and embargoes can be effective tools to coerce government to change their behaviour.⁶⁸⁵

iv Peacekeeping Missions: Deploying peacekeeping missions in conflict areas can ensure that civilians are protected and that the risk of their rights being violated are drastically reduced⁶⁸⁶.

Other recommendations include:

⁶⁹ United Nations Office of the High Commissioner, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> accessed 25 July 2025

⁷⁰ Ibid.

⁷¹ United Nations Office of the High Commissioner, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> accessed 25 July 2025

⁷² United Nations General Assembly, 'Implementation and Enhancement of International Cooperation in the Field of Human Rights' <https://documents.un.org/doc/undoc/gen/g23/071/71/pdf/g2307171.pdf> accessed 25 July 2025

⁷³ Ibid.

⁷⁴ United Nations Office of the High Commissioner, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> accessed 25 July 2025

⁷⁵ United Nations Peace Keeping, 'Protection of Civilian Mandate' <https://peacekeeping.un.org/en/protection-of-civilians-mandate#> accessed 25 July 2025

d. Education and Training: Making provision for human rights and international humanitarian law education to all sectors of society and training for law enforcement and military personnel is important⁶⁸⁷.

e. Monitoring and Prevention: The establishment of mechanisms for the prevention and monitoring of social disputes can aid in the reduction of human right violations⁶⁸⁸.

f. Public awareness: Awareness about human rights should be made and a culture of respect for human rights being created will be very essential.⁶⁸⁹

g. Engaging with Civil Society: Supporting and engaging with civil society organizations working on human rights is necessary for the promotion of accountability and protection of human rights.⁶⁹⁰

The future of international human rights law has many opportunities as well as challenges. Although the universality of human rights remains a fundamental precept, the world is changing due to the emergence of new powers, conflicting interpretations of human rights, technological breakthroughs and changes in global power dynamics. Nevertheless, the continuous fight for social justice and the creative ways activists are using international law to promote change demonstrate its continued importance.⁶⁹¹

⁷⁶ United Nations Office of the High Commissioner, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> accessed 25 July 2025

⁷⁷ Ibid.

⁷⁸ Human Rights Careers, 'How to Promote Human Rights: 10 Examples' <https://www.humanrightscareers.com/issues/how-to-promote-human-rights-10-examples> accessed 25 July 2025

⁷⁹ Ibid.

⁸⁰ Par Engstrom, 'The Future of Human Rights in a Global Order of Change and Continuity' <https://papers.ssrn.com/sol3/papers.cfm?> Accessed 25 July 2025

AN APPRAISAL OF COMPARATIVE ANALYSIS OF (GHARAR UNCERTAINTY, RISK, DECEIT, AND SPECULATIVE) IN TRANSACTION UNDER ISLAMIC LAW AND COMMON LAW

Atiku Haliru Said*
Abubakar Garba**

Abstract

This paper presents a comparative analysis of the concepts of Gharar (uncertainty, risk, deceit, and speculation) in Islamic Law and Common Law. Gharar, a fundamental concept in Islamic finance, is examined in its various dimensions to understand how it is translated and interpreted within the frameworks of both legal systems. The study explores the origins and definitions of Gharar in Islamic jurisprudence, focusing on its implications for financial transactions and contracts. It also delves into the principles of risk and uncertainty in Common Law, highlighting the differences and similarities in their treatment and regulation. The analysis reveals that while both legal systems aim to ensure fairness and transparency in economic activities, their approaches to managing uncertainty and risk differ significantly. Islamic Law emphasizes the prohibition of excessive uncertainty and deceit to promote ethical financial practices, whereas Common Law tends to accept a certain level of risk and speculation as inherent to market operations. The study also addresses how these differences impact the enforceability and interpretation of contracts, with Islamic Law prioritizing the prevention of unjust enrichment and exploitation, and Common Law focusing on balancing interests and economic efficiency. By comparing Gharar with the principles of risk and deceit in Common Law, this paper sheds light on the underlying philosophical and practical distinctions between the two legal systems. The findings underscore the importance of contextual and cultural factors in shaping legal norms and highlight the potential for cross-jurisdictional learning and adaptation. This comparative analysis not only enhances the understanding of Gharar but also contributes to broader discussions on legal pluralism and the harmonization of international financial regulations.

Keywords: *Gharar, Uncertainty, Risk, Deceit, Speculative, Transaction, Islam, frameworks, jurisprudence and Law.*

1.1 Introduction.

Islamic law scholars disagree on whether the insurance contract is prohibited or not under Islamic law. The argument is based mainly on whether it pertains to the kind of contracts involving riba. Generally, this view is interpreted differently leading into the emergence of three schools of thought, which are: those who view it as prohibited: those who view it as permitted: and those who view that some types of the contract are permitted while some are prohibited. The first group mainly consist of the traditional scholars of Islamic laws through some distinguished contemporary scholars like Zuhayhi;⁶⁹² and Musleh-Ud-Din⁶⁹³ also hold the same view. The

* PhD, Lecturer in the Department of Shariah, University of Maiduguri. Tel: 08033892837.

** (Ph.D in View) Lecturer in the Department of Public Law, University of Maiduguri. Tel: 07037903862

second view exist as early as the late 9th and early 20th centuries.⁶⁹⁴ Among them are Siddiqi who argues that the contemporary insurance business is based on a syriah-vaild concept and is distinct from maysir and gharar. And the involvement of interest in it also is not inherent to its concept.⁶⁹⁵ The last view contends that all insurance contract can be said to be prohibited. Some of these contracts are permitted especially those which are beneficial to the public at large. For instance, Muhammad ‘Abduh, Muhammad Abu, Zarah and Muhammad Yusuf Musa are adherent of this school.⁶⁹⁶

1.2 Gharar in Conventional Insurance

Insurance in its legal form may be defined as a contract whereby one party, called the insurer undertakes, in return for the agreed consideration, call the premium, to pay to another person, called the assured or insure, a sum of money or its equivalent (the compensation), on the happening of a specified event.⁶⁹⁷ It is a contract whereby the insured assumes the risk of an uncertain event, even (insured event or the peril insured against) promising to pay to the assured, money or money’s worth on the occurrence of such an event.⁶⁹⁸ They are two types of insurance. Firstly, contract of insurance that merely secure the payment of money on the happening of the specified event. In this class of insurance, the amount recoverable is not measured by the extent of the insured loss, but is payable whenever the specified event happens, irrespective of whether the assured, in fact, sustains a pecuniary loss or not. Life insurance, personal accident insurance and sickness insurance are of this type. Whereas in the other class of insurance, the amount recoverable is measured by the extent of the insured’s pecuniary loss. These are contracts of indemnity and normally are known as general insurance policies.⁶⁹⁹ The subject matter of the contract of insurance is money or financial interest protected against the loss to the thing insured. The protection given by the contract of insurance is not a protection against accident in that the

⁶⁹² Zukayli, Walibah, “Aqd al-Tamin:al- Dawabit al-siyar’iyyah li suwar wa l’ada. al-Ta’mi, (Damascus: Dar al-Maktah, 1995) 7-9

⁶⁹³ Musleh-ud-din, Muhammad Insurance and Islamic Law (Lahore: Islamic Publications 1982)

⁶⁹⁴ Kling Mmuller, E “The Concept and Development of Insurance and Islamic Countries” (1969) *Islamic Culture* 33-34.

⁶⁹⁵ Siddiqi, Insurance in an Islamic Economy (Leicester: Islamic Foundation 1985) 40-41.

⁶⁹⁶ Ahmad Hidayat, (2000).

⁶⁹⁷ Vany, E.R. Hardy, General Principles of Insurance Law (1993 London: Butterworth) 3; Marks Dorfman Introduction to Insurance (New Jersey: Prentice Hall, 1902) 5.

⁶⁹⁸ The Insurer is the party who agrees to pay compensation for the losses and the insured is the party who will receive the compensation. The payment that the insurer receives is called a premium and insurance contract is called policy

⁶⁹⁹ Vany (n 618) 7-10

contract can prevent an accident from happening. It merely secures for the assured, when the accident happened, the payment of the sum money. Whereas the subject matter of insurance in the sense that it exists independently of the contract. It is the thing that the insured fears a risk. For example, in a motor policy, the motor car is the subject matter, while in life policy, the life of the insured, which is at risk of injury or death is the subject matter. This is also termed as the insurable interest or insurable risk. It is the material interest protected against the unexpected loss or damage.⁷⁰⁰ A contract of insurance also must be entered into for a specific but uncertain occurrence of an event. It is not enforceable should either party be found to be in breach of the principles of *uberimae fidei* (utmost good faith), benefits from a policy cannot be obtained unless the beneficiary has an insurable interest in the subject matter of the policy.⁷⁰¹

Uncertain occurrence relates to the insured events occurrence whether it will or will not happen as well as the time of its occurrence. In life insurance where death is a certainty, the uncertainty relates to the time when it will happen. Insurance on the matter does not decrease the uncertainty for the individual as to whether or not the event will occur, nor does it alter the probability of occurrences, but it does reduce the probability of financial loss connected to the event.⁷⁰² “The main function of insurance is to reduce risk for the insurer, by combining many individual loss exposures, thus reducing it through spreading the cost of the unexpected losses between the participants. The key to this function is the law of large numbers, which implies that increasing the numbers of loss exposures decreases the risk by transferring the risk to the insurer who promise to reimburse him when a loss occurs. Though there are many types of risk prevalence in the society an insurance contract only deals with pure risk, which refer to the situation that can result in gain, loss, or no change.⁷⁰³ However, for practical purposes, not all pure risks can be privately insured. There are ideally certain requirements of an insurable risk like a sufficiently large number of homogenous exposure units to make the losses reasonably predictable. Where the loss produced by the risk must be definite or determinable, also must be fortuitous or accidental and unintentional and should not be catastrophic.⁷⁰⁴

⁷⁰⁰ Ivany (n 3), pp. 11-18; Radja, George. E. *Principles of Risk Management and Insurance* (US: Addisu Wesley Longman, 2001) 72.

⁷⁰¹ Omar, Maizon(1905) “Principles and practice of insurance” in seminar towards a consumer-oriented insurance industry, October 14th 1956, Pataly Jaya.

⁷⁰² Vaughan, Emmet J (1986), *Fundamentals of Risk and Insurance*, Toronto: John Wiley & Sons. P.p. 35

⁷⁰³ Dorfman (n 6) 9

⁷⁰⁴ Vaughan (n 11) 26-27

1.3 Scholars Debates and view on Gharar Conventional Insurance

Gharar emerges from two source. Generally, the doubt or indeterminacy about the contract arises when one or both parties enter the contract without knowing exactly what the outcome will be. Neither the insurer nor the insured know the precise nature and extent of their rights and obligations until after the occurrence of the insured event. The second type of gharar is also said to occur in insurance as in most cases the insured when entering into such contract are unsure, if not totally ignorant of the terms. Most do not read the policy while among those who read it, many do not understand its contents.⁷⁰⁵ Normally the discussion on gharar insurance in conventional state is focused on the gharar due to doubts only. This may be so because the elements of frauds in insurance are controlled by relevant legal acts such as Malaysian Insurance Act, 1963.

Gharar insurance arising from doubts is said to take place in four ways namely in the contract outcome: in the length of the contract period and in the amount of compensation and premium.⁷⁰⁶ Uncertainty in the existence of the contract especially ambiguity concerning the existence of compensation. According to the traditional jurists, the subject matter of sale contract must be of rescannable knowledge (Ma'lum) in its specification (ta'yin) character (s.fah) and quantum (qadr). It should also be able to be delivered or received.⁷⁰⁷ The above gharar is associated with the deliverability of the subject matter which may arise when the seller has no physical control or inability to deliver or person the object of the contract. This type of gharar happens in contract of medium, during the inception of the contract when its existence is not known (Majhul) and there is a possibility of non-existence in the future.⁷⁰⁸ Insurance is said to countian gharar that is, it is uncertainty in its existence since one of its subject matter (ma'qud' alaugh) namely the compensation has the possibility of non-existence in the future. The compensation is uncertain because it depends on the occurrence of the insurable risk which may not happen. Take for example a case of motor insurance. The coverage normally is annually. During the inception of the contract, there is always uncertainty or ambiguity about the possibility of the occurrence of

⁷⁰⁵ Mahmood, NIK Ramlah (1991), "Takaful: The Islamic system of mutual insurance. The Malaysia Experience" Arab Law Quarterly, P.P. 283-4.

⁷⁰⁶ Ismail, A. (1997), the lum. Insurance. Com. My/zone-consumers/interactive-guide/takaful; Muslehud-din,m (n2) 143-165; mahmud, Abd-al-latif Mahmud Ali (1994) 3012-302: shart al-din (1981) 142-168

⁷⁰⁷ Shabini, al-khatib (n.d) vol.2 pp. 26, saloh

⁷⁰⁸ Abd Alsami (1947), pp. 177

the insurable risk among which is an accident to the car or the car is stolen during the period the property is insured, then it relies upon the occurrence of the event. That is, the compensation will only be given when the car is involved in an accident or is stolen. Since the insured event carries the possibility of “not happening” during the time of the contract, then the compensation also carries the possibility of non-existence. And with the possibility of non-existence of the compensation which is one of the *ma’qud’alayh* (subject matter), then the arise uncertainty in the existence of the contract itself. Not all type of insurance carry this type of *gharar*. For example, in a permanent or whole life insurance policy where the policy remains in force during entire lifetime.⁷⁰⁹ The insurable risk is a certain matter which is death. And with the certainty of death, the indemnity is also a sure thing.⁷¹⁰

Uncertainty in the outcome or result of the contract especially ambiguity concerning the payment of compensation. This uncertainty in the outcome or result of the uncertainty in the existence of the contract or specifically the compensation. It happens because there is a possibility of non-occurrence of the insured event during the contract period. With this possibility comes the possibility of non-existence or non-delivery of the insured event during the contract period. With this possibility comes the possibility of non-existence or non-delivery of the compensation. Thus there is no certainty in the payment of the compensation at the initiative of the compensation at the contract. For example fire insurance for home. Because the insurable risk that is fire has the possibility of non-occurrence. Since compensation is one of the subject matter, it is required by the Islamic law of contract that it also should be able to be delivered. The possibility of non-delivery as men implies that there is *gharar* in the contract. Due to this interrelatedness with the uncertainty of contracts existence or payment of the compensation is a certainty since death is a sure thing and will definitely happen. Uncertainty in the exact amount of the compensation that shall be received by the insured or the amount of premium by the insurer.

As mentioned above, one of the conditions that must be observed by the subject matter is reasonable knowledge in its quantum (*qadr*).⁷¹¹ This condition is applicable to both, the premiums and the compensation. The uncertainty besides the premium for all causes of insurance except

⁷⁰⁹ [www.Lifeinsurance.net/about-whole-life-insurance.tm\(08/02/2002\)](http://www.Lifeinsurance.net/about-whole-life-insurance.tm(08/02/2002))

⁷¹⁰ Sharf al-Din (1981). Ibid.

⁷¹¹ Want of knowledge in quantum could happen in a contract if the quantity of subject matter is not fully specified by either party or both. It is mostly applicable to *ribbawi* goods in order to avoid the implication of *riba*. Since insurance is a financial contract that involves the exchange of money then the condition is also applicable to it. See Hidayat (n5) 121-2.

some general ones that need to be paid lump sum at the start of the contract, for instance., motor insurance. The uncertainty about the amount of the premium exists because the total amount of the premium has to be paid by the insured depends on the occurrence of the risk. If we say that the premiums for all types of insurance are already quoted and listed before and according to relevant criteria and the insured already knows the amount he needs to pay monthly in the course of the contract, we might argue that he is in fact not sure how many quoted premiums would he pay in the future. This is again due to his insurance of the time when the insurable risk will happen.

As to uncertainty concerning the compensation, we should view it from several angles. Firstly, uncertainty in the amount of the compensation paid by the insurer and received by the insured. Admittedly there are cases of insurance where the amount of compensation shall be received in the event of the insurable risk.⁷¹² But setting fixed compensation for example for specific injury still carry uncertainty since the injury's existence as well as its extent is not known at the start of the contract.

Another issue is when the compensation is not definite or set in certain ranges at all but is paid based on the insurer's observation about the extent of injury or peril itself like the compensation for burnt house or damaged ear. Thus again, the compensation is ambiguous since it depends on the extent of the injury that is not known at the start of the contract. The uncertainty here not only concerns the exact amount shall be received in the event of the risk but also the formula or "how the insurance set the amount of compensation. This uncertainty regarding the formula used also pervades the fixed compensation since the insureds are not expect that the insurer will somehow pay them the compensation and normally the amount of the compensation is left to be decided solely by the insurers.

Uncertainty in the contract period since it is based on a time frame which is not known and cannot be known. This type of uncertainty exists in all type of insurance contract due to the fact that the knowledge of the happening or the occurrence of the insurable risk is beyond anyone's comprehension. Although, contracts like motor insurance has its own time frame which normally are annually, the uncertainty is still there. If we refer to the uncertainties raised in the insurance contract above, we may notice that all the uncertainties develop, because of the element of uncertainty concerning the happening of the event that is pure risk. The compensation, depends

⁷¹² Islamic law of contract provides that since this is an exchange of money for money (i.e ribani transaction) then the exact amount of compensation need to be stated at the commencement of the contract.

on pure risk and on the insurers decision that is on the exact amount of compensation paid to the beneficiaries. All of the argument about the existence of gharar in major or minor insurance contract, basically concerns this root of uncertainties, which is known in conventional insurance as pure risk. Basically, most Islamic scholars admits that uncertainties exists in the contract in the forms as mentioned but they differ about the extent of these uncertainties. The proponent of major gharar in insurance see the contract as overwhelmed with gharar, based on the fact that gharar pervades the subject matter though doubts in both price (premium) and main fact (compensation), could make the contract void.⁷¹³ Whereas the proponents of minor or non-gharar in insurance view it from a wider perspective where they notice that the gharar depends on something beyond human control which is pure risks that cannot be eliminated.⁷¹⁴

1.4 Observations

1. Understanding Gharar in Islamic Law:

Gharar refers to excessive uncertainty or ambiguity in the terms of a contract or transaction under Islamic law. It is considered impermissible because it can lead to unfair exploitation, deceit, and harm to one of the parties involved. Gharar encompasses not only uncertainty but also deceit and speculation that may result in unjust outcomes.

Islamic law emphasizes the principles of fairness, transparency, and the protection of all parties in a transaction. Therefore, contracts containing elements of Gharar are often deemed invalid or voidable.

2. Risk and Speculation in Common Law:

In contrast, risk and speculation are generally accepted elements in transactions under the Common Law. Risk, understood as the potential for loss or gain, is inherent in most business dealings and is often considered a necessary part of entrepreneurship and investment. Speculation involves taking on risk with the hope of substantial gain but is distinguished from deceit as it is based on informed decision-making. Common law generally permits speculative transactions as long as there is no fraudulent intent or misrepresentation.

3. Comparative Analysis of Gharar and Risk:

The primary difference between Gharar in Islamic law and the concept of risk in Common Law lies in the degree of uncertainty and the ethical considerations associated with it. While Common

⁷¹³ See Sharf al-Din (1981) 142-168, Mahmud (1994) 301-302

⁷¹⁴ Zarga (1994), pp. 51-52 Ma'sum (2001), pp. 105-106; Saiful Azhar, "Islam and Life Insurance" *The Sun* (March 22nd 1996)

Law permits a certain level of risk and speculation, Islamic law prohibits transactions where uncertainty reaches a level that could result in unfairness or harm. The concept of Gharar in Islamic law also incorporates moral and ethical dimensions that are less emphasized in Common Law. Islamic law not only seeks to minimize harm but also promotes mutual benefit and fairness, which are not always the focus in Common Law, where the autonomy of the contracting parties is paramount.

4. Deceit and Misrepresentation:

Both Islamic law and Common Law strongly condemn deceit and misrepresentation in transactions. However, the threshold for what constitutes deceit differs, with Islamic law taking a stricter approach due to its emphasis on ethical conduct. At Common Law, deceit typically requires proof of intentional misrepresentation, while Islamic law may consider broader forms of deception, including the omission of material facts that could lead to Gharar.

5. Application and Enforcement:

The application of Gharar in Islamic jurisdictions can lead to the annulment of contracts or transactions that would be permissible under Common Law, particularly those involving high levels of speculation or uncertainty. Common Law systems, on the other hand, often enforce contracts even where significant risk or speculation is involved, provided there is no fraud or misrepresentation.

1.5 Recommendations

1. Enhanced Understanding and Integration:

Legal practitioners working in jurisdictions with both Islamic and Common Law influences should be trained in the nuances of Gharar and its implications for contracts and transactions. This training should include comparative studies that highlight the differences and potential conflicts between the two legal systems. In jurisdictions where both legal systems coexist, there should be efforts to harmonize the rules regarding uncertainty, risk, and deceit in transactions. This could involve creating hybrid legal frameworks that respect the ethical principles of Islamic law while accommodating the practicalities of Common Law.

2. Clear Guidelines and Contract Drafting:

Clear guidelines should be developed to help parties draft contracts that avoid Gharar while still allowing for necessary business risks. These guidelines should outline what constitute acceptable risk under both Islamic and Common Law and how to structure transactions to minimize

uncertainty and speculation. Contractual clauses that address potential uncertainties and outline the responsibilities of each party in managing risk can help bridge the gap between Islamic and Common Law approaches.

3. Ethical Considerations in Business Transactions:

Businesses operating in Islamic jurisdictions should be encouraged to adopt ethical practices that go beyond legal compliance. This includes transparency in disclosing potential risks and uncertainties to all parties involved, thereby reducing the likelihood of Gharar and promoting fair dealing. Common Law jurisdictions could also benefit from incorporating some of the ethical principles found in Islamic law, particularly in areas where consumer protection and fairness are concerned. This could involve stricter regulations on speculative transactions that might harm vulnerable parties.

4. Judicial and Arbitration Training:

Judges and arbitrators in mixed jurisdictions should receive specialized training on Gharar and its implications for contract enforcement. This training should focus on understanding when a contract might be considered voidable under Islamic principles and how to apply these principles alongside Common Law doctrines. Arbitration clauses that specify the application of Islamic principles in resolving disputes could help parties ensure that their transactions are compliant with both legal systems.

5. Research and Academic Collaboration:

Further, comparative research should be conducted to explore how Gharar and similar concepts in Common Law can be aligned or reconciled. Academic institutions should collaborate on studies that examine successful integration models in countries where both legal systems are in practice. Publications and case studies highlighting the practical application of Gharar in modern commercial transactions could provide valuable insights for legal practitioners and scholars. These observations and recommendations aim to enhance the understanding and application of Gharar in the context of Islamic law and its comparison with the concepts of risk, deceit, and speculation under Common Law, promoting fairer and more ethical business practices across different legal systems.

1.6. Conclusion

The comparative analysis of Gharar (uncertainty, risk, deceit, and speculation) in translation under Islamic law and common law has revealed fundamental differences and nuanced

similarities between these two legal frameworks. This exploration provides insights into how each system addresses elements of uncertainty and risk in contractual agreements and transactions, reflecting their underlying principles and societal values. Gharar, rooted in Islamic jurisprudence, refers to excessive uncertainty and ambiguity in contracts. Islamic law seeks to minimize Gharar to ensure fairness, transparency, and mutual consent in commercial transactions. The prohibition of Gharar is aimed at preventing unjust enrichment and exploitation, promoting ethical conduct, and maintaining social justice. Contracts involving excessive uncertainty, such as those with unclear terms or speculative elements, are considered void under Islamic law. Risk and Uncertainty in Common Law: Common law, primarily practiced in Western legal systems, distinguishes between acceptable levels of risk and those considered excessively speculative or deceitful. While common law allows for some degree of risk and uncertainty, it emphasizes informed consent and the ability of parties to assess and manage potential risks.

- Legal principles such as caveat emptor ("let the buyer beware") and doctrines addressing fraud and misrepresentation play key roles in regulating uncertainty and deceit in contracts. Common law focuses on the freedom of contract, where parties are generally free to negotiate terms, provided there is no fraud, undue influence, or significant imbalance of power. Both Islamic law and common law recognize the importance of reducing uncertainty and deceit in contractual agreements, albeit through different mechanisms and philosophical foundations. Islamic law's strict prohibition of Gharar reflects its broader ethical and social objectives, whereas common law's approach balances individual autonomy with protections against unfair practices. Islamic law tends to take a more conservative stance, prohibiting transactions with significant uncertainty, such as speculative investments, gambling, and certain derivative contracts. Common law, however, permits such transactions provided they are entered into freely and with full disclosure of the associated risks. Understanding the treatment of Gharar in Islamic law and risk and uncertainty in common law is crucial for practitioners and scholars engaged in cross-jurisdictional legal matters.

This knowledge helps in drafting contracts that are compliant with the legal and ethical standards of both systems. - Businesses operating in Islamic finance or international trade must navigate these differences to ensure their transactions are legally sound and culturally sensitive. This requires a nuanced approach to contract formulation, risk management, and dispute resolution.

Finally, the comparative analysis of Gharar under Islamic law and the treatment of uncertainty and risk under common law highlights the distinctive ways in which these legal systems address contractual fairness and ethical conduct. While both aim to protect parties from undue harm and deceit, they do so through different doctrinal lenses and practical applications. A deep appreciation of these differences and similarities enhances the ability of legal practitioners and scholars to bridge gaps between the two systems, fostering more equitable and effective legal and commercial practices in an increasingly interconnected world.

A possible argument for the view is that the prohibited gharar phenomenon only happens in speculative actions that carry not only the possibility of profit or loss but also choice. In this type of action we also see that elements of Zulm will prevail when gharar is exploited or used by the contracting parties. But then, both parties are free to avoid the uncertainty or make it disappear altogether. Take the sale of fish in a pond as an example. When the contract is initiated as it is. It carries the possibility of getting the fish (i.e making profit) and not getting it (i.e making loss). The seller has the choice to avoid the gharar by catching the fish first before selling it, thus making the contract legal. Here we see a type of Zulm emerging from this uncertainty where the seller took the advantage of exploiting the greater gharar over a minor gharar when he sell the fish he already caught.

From the above observations, we conclude that conventional insurance does carry excessive gharar. Firstly, because the subject matter exchange in the contract are between money and money which is a kind of a buying and selling contract thus making the contract exposed to conditions or requirements of reasonable knowledge in the subject matters quantum as well as the ability to deliver them. Secondly, the uncertainty arising due to uncertainty of the happening of the insured event as well as the time of happening. Although the event or the time is beyond man's control, any contract attached with these conditions is not allowed due to want of knowledge. Want of knowledge itself shall result in the contract.

WOMEN'S INHERITANCE RIGHTS UNDER ISLAMIC LAW IN NIGERIA: BETWEEN RELIGIOUS NORMS, CUSTOMARY PRACTICES, AND ADR REMEDIES

Kudirat Magaji W. Owolabi*

Abstract

Despite the clear provisions of Islamic law guaranteeing women's rights to inheritance, many Muslim women in Nigeria are routinely denied their lawful entitlements. This denial is often perpetuated by patriarchal customs, cultural misinterpretations of Islamic injunctions, and institutional barriers that hinder access to formal justice. Traditional litigation processes are frequently inaccessible or unsuitable for women seeking redress, while alternative dispute resolution (ADR) particularly sulh (Islamic mediation) remains underutilized as a tool for resolving inheritance disputes in a gender-sensitive manner. This paper interrogates the gap between Islamic legal prescriptions and the lived realities of Muslim women in Nigeria regarding inheritance. It aims to: (i) examine the normative framework governing female inheritance rights under Islamic law; (ii) identify the socio-cultural and legal challenges inhibiting enforcement of those rights; and (iii) assess the potential of ADR, especially faith-based mechanisms, in promoting fair and equitable dispute resolution. The paper adopts a qualitative methodology, drawing on doctrinal analysis of Islamic jurisprudence and Nigerian legal instruments, as well as field-based insights from interviews with scholars, practitioners, affected women, and community mediators. The paper contends that an inclusive and culturally grounded ADR framework can serve as a viable pathway for actualising Muslim women's inheritance rights in Nigeria, and calls for reforms to integrate Islamic principles of justice with accessible, gender-responsive dispute resolution mechanisms.

Keywords: ADR, Inheritance disputes, Women, Muslims, Islamic Law

1. Introduction

Inheritance rights are a fundamental aspect of socio-economic justice and legal identity, particularly for women in Muslim communities. Under Islamic law, women's rights to inherit are not only divinely mandated but clearly articulated in the Qur'an, which states: "*For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much—an obligatory share.*"⁷¹⁵ Despite such explicit provisions, many Muslim women in Nigeria are routinely denied their rightful entitlements. This denial is often justified through patriarchal interpretations of Islamic texts, cultural resistance to female inheritance, and systemic challenges in enforcing women's legal rights.⁷¹⁶ Nigeria's legal landscape is characterised by plural legal systems, comprising statutory law, customary law, and Islamic law, all of which operate concurrently.⁷¹⁷

*PhD., Senior Lecturer, Dept of Business & Private Law, Faculty of Law, Kwara State University, Malete, Nigeria.

⁷¹⁵ Qur'an 4:7.

⁷¹⁶ Chirwa, Danwood Mzikenge, 'Toward Revitalising Economic, Social, and Cultural Rights in Africa' [2002] (10) (1), *Human Rights Brief* 14-17, 25.

⁷¹⁷ Azizat Omotoyosi Amoloye-Adebayo, 'Islamic Law, The 1999 Constitution and the Challenges of Interfaith Relations in Nigeria' [2018] (3)(1), *Journal of Islam in Nigeria* 33 – 46.

While Sharia is formally applied in civil matters such as marriage and inheritance in several Northern states, even thus, societal and cultural barriers often undermine women's inheritance rights.⁷¹⁸ In Southern Nigeria, the situation is more complex; Sharia has no official recognition in civil matters, and customary norms frequently discriminatory tend to dominate inheritance proceedings, further marginalising Muslim women.⁷¹⁹ Litigation is rarely a viable option for most women due to financial constraints, lack of legal awareness, cultural intimidation, and the slow pace of judicial processes.⁷²⁰ In response, alternative dispute resolution (ADR) methods especially *sulh* (Islamic mediation) have gained attention as potentially effective mechanisms for resolving inheritance disputes in a culturally grounded manner.⁷²¹ However, their application remains inconsistent and underdeveloped, and questions persist about whether such informal mechanisms truly deliver justice to women in patriarchal settings.⁷²²

This paper investigates the intersection of Islamic law, customary practice, and ADR in the enforcement of Muslim women's inheritance rights in Nigeria. It aims to examine the normative scope of these rights, explore the structural and socio-cultural challenges to their enforcement, and assess whether ADR particularly *sulh*—can offer a fair and accessible route for resolving inheritance disputes involving Muslim women.

2. Conceptual and Theoretical Framework

Understanding the complexities surrounding Muslim women's inheritance rights in Nigeria requires a clear conceptual foundation rooted in both Islamic jurisprudence and socio-legal theory. In Islamic law, the rules of inheritance are governed by *Fara'id*—a detailed system of fixed shares outlined primarily in Surah An-Nisa of the Qur'an and elaborated upon by classical jurists.⁷²³ These rules entitle women to specific portions of an estate whether as daughters, mothers, wives, or sisters and they are not granted arbitrarily but as a divine right.⁷²⁴ Importantly, the rationale for differential shares between male and female heirs is rooted in the Islamic legal framework of financial responsibility (*nafaqah*), where men are obligated to maintain the family, thereby justifying their comparatively larger shares.⁷²⁵ However, the practical application of *Fara'id* in Nigeria is often distorted by the intersection of Islamic norms with entrenched customary practices and patriarchal interpretations.⁷²⁶ In many Muslim communities, especially in rural areas, cultural norms supersede religious law, with practices such as disinheriting women,

⁷¹⁸ O. C. Eze, *Human Rights in Africa: Some Selected Problems*. (Lagos, Nigerian Institute of International Affairs, 984).

⁷¹⁹ O. Anyanwu, 'Enforcing the Shari'ah in Nigeria: Women, Justice, and the Muslims Collective Conscience' [2009] 26(3), *American Journal of Islam and Society*, 24–40.

⁷²⁰ Muhammed Tabiu, 'Towards a Strategy for Protection of Women's Rights under Sharia in Nigeria' (Keynote address delivered at the two-day conference on Women's Rights and Access to Justice under the Sharia in Northern Nigeria Organized by WACOL, Abuja, 25-28 Feb. 2003)

⁷²¹ A. Muhammad and Others 'Alternative Dispute Resolution (As-Sulh) as a Principle of Islamic Legal System on Marriage Conflicts Among Muslim Ummah' [2023] 9(1), *FITRAH: Jurnal Kajian Ilmu-ilmu Keislaman*, 185-200.

⁷²² Hauwa Ibrahim, *Practicing Shariah Law: Seven Strategies for Achieving Justice in Shariah Courts* (Chicago, American Bar Association 2012) 89–94.

⁷²³ Qur'an 4:11–12; 4:176

⁷²⁴ M. Uddin, Provisions of the Rights of Inheritance in Special Circumstances in the Muslim Law: An Overview [2021] (12) *Beijing Law Review*, 205-214

⁷²⁵ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Ilmiah Publishers 2003) 295.

⁷²⁶ G. Ahmad and J. Abdulmajeed, 'An Examination of the Implementation of Islamic Law of Inheritance in Yoruba Land' [2025] (12)(1), *International Journal of Multidisciplinary Comparative Studies: Special Edition*, 191-196

denying widows their shares, or substituting Islamic rules with ethnic traditions.⁷²⁷ These deviations are frequently justified by invoking local customs or manipulated religious rhetoric that subordinates women's entitlements to male authority.⁷²⁸ As a result, many Muslim women, though aware of their religious rights, remain structurally dis-empowered to claim them.

ADR, and specifically *sulh* (Islamic mediation), emerges as a culturally sensitive means of resolving such disputes without resorting to adversarial litigation.⁷²⁹ *Sulh* is an Islamic principle derived from both the Qur'an and Sunnah, promoting reconciliation, compromise, and restoration of social harmony.⁷³⁰ When properly applied, it can be a powerful tool for ensuring women's rights in inheritance disputes, especially within communities where formal court processes are viewed as alien or antagonistic. However, the potential of *sulh* remains limited by the dominance of male mediators, informal procedures that lack accountability, and widespread ignorance of Islamic legal entitlements.⁷³¹ This paper adopts a theoretical framework that draws from Feminist Legal Theory and Legal Pluralism. Feminist legal theory provides a lens to interrogate how law, religion, and culture intersect to marginalise women in ostensibly rights-based systems.⁷³² Legal pluralism, on the other hand, helps situate the co-existence of multiple normative systems; Islamic, customary, and statutory within Nigeria's legal landscape, highlighting the complexities and contradictions that shape women's access to justice.⁷³³ By combining both perspectives, the study aims to provide a nuanced understanding of how women's inheritance rights are constructed, contested, and (potentially) enforced through ADR in a pluralistic society.

3. Legal and Normative Basis for Women's Inheritance Rights

The inheritance rights of women in Nigeria are shaped by a complex legal structure that includes Islamic law, common law, and customary practices. While both Islamic law and common law provide legal recognition for women's rights to inherit, the normative enforcement and social acceptance of these rights remain deeply contested due to entrenched patriarchal structures and divergent interpretations of legal texts.⁷³⁴ Under Islamic law (Sharī'ah), women are granted specific rights to inheritance as stipulated in the Qur'an. The foundational verses in Surah al-Nisa' (4:7, 4:11–12, and 4:176) detail the shares allocated to both male and female heirs. According to these provisions, a woman may inherit as a daughter, wife, mother, or sister. For instance, a daughter is entitled to half the share of a son, and a wife may inherit one-quarter of her deceased husband's estate if they have no children, or one-eighth if children are present.⁷³⁵ Islamic inheritance law reflects a balance between equity and familial responsibility, assigning differential

⁷²⁷ Rafatu AbdulHamid, 'Islam and Cultural Interferences in the Lives of the Nigerian Women' [2014] (4) (17) *Research on Humanities and Social Sciences*, 74-79.

⁷²⁸ Ibrahim Doi Abdur Rahman, *Shariah: The Islamic Law* (London, Ta-Ha Publishers 1984) 312.

⁷²⁹ Adamu Abubakar Muhammad and Others 'Alternative Dispute Resolution (As-Sulh) as a Principle of Islamic Legal System on Marriage Conflicts Among Muslim Ummah' [2023] 9(1) *FITRAH Jurnal Kajian Ilmu-ilmu Keislaman*, 185-200.

⁷³⁰ Qur'an 49:9–10; Sahih al-Bukhari, Book 49, Hadith 870

⁷³¹ Hauwa Ibrahim, *Practicing Shariah Law: Seven Strategies for Achieving Justice in Shariah Courts* (American Bar Association 2012) 102–105.

⁷³² Hilary Charlesworth and Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' [1991] 85(4) *American Journal of International Law* 613-639, 621

⁷³³ Sally Engle Merry, *Legal Pluralism* [1988] 22 *Law & Society Review* 869-875, 871.

⁷³⁴ Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oneworld Publications 2008) 135.

⁷³⁵ Qur'an 4:11–12.

shares not based on gender inequality but on financial responsibilities attributed to males under Islamic social order.⁷³⁶ These rights are deemed divinely ordained and are not subject to human discretion, a position reinforced by Qur'anic admonition against altering inheritance shares.⁷³⁷ These Qur'anic verses are reinforced by Hadith literature and interpretations by classical jurists such as Imam Malik, Abu Hanifa, and Al-Shafi'i, who developed comprehensive inheritance rules (*'ilm al-fara'id*) that continue to influence contemporary Sharia courts.⁷³⁸

In Nigeria, the application of Islamic inheritance law varies significantly across regions due to the country's plural legal system.⁷³⁹ The 1999 Constitution guarantees freedom of religion and personal law, allowing Muslims particularly in the northern states operating under the Sharia legal framework to apply Islamic principles to personal matters, including inheritance.⁵ The Sharia Courts of Appeal, established under Sections 275–279 of the 1999 Constitution, have jurisdiction over civil proceedings involving Islamic personal law, which includes inheritance rights.⁷⁴⁰ However, the Constitution is silent on the full codification of Islamic inheritance, leaving room for inconsistencies and regional disparities in enforcement. Outside the northern Sharia jurisdictions, the enforcement of Islamic inheritance norms becomes more complex. In Southern Nigeria, especially in Yoruba and Igbo Muslim communities, Sharia is not formally recognised in civil courts.⁷⁴¹ As a result, inheritance disputes are often adjudicated under customary law or statutory probate regimes, which may not reflect Qur'anic principles.⁷⁴² In such cases, women's inheritance rights are frequently overridden by customary practices that exclude or limit female heirs.⁷⁴³ This dual system creates legal uncertainty and often disadvantages Muslim women who seek to assert their religious rights in formal courts.⁷⁴⁴

The common law system in Nigeria, inherited from British colonial rule, provides for gender-neutral inheritance rights. The Administration of Estates Law, applicable in many states, stipulates that where a person dies intestate, property is to be distributed equally among the deceased's surviving children, irrespective of sex.⁷⁴⁵ Additionally, the Married Women's Property Act of 1882, still influential in Nigeria, recognizes a married woman's right to own and inherit property in her own name, thereby securing her independent legal personality.⁷⁴⁶ Furthermore, the Wills Act of 1837 allows individuals to dispose of their estate by will without discrimination based on sex. These statutory provisions reflect the liberal individualism that underpins common

⁷³⁶ Bernard Weiss, *The Spirit of Islamic Law* (Georgian University Press 2006) 89.

⁷³⁷ Qur'an 4:13–14.

⁷³⁸ Kazi Arshadul Hoque and Muhammad Jalal Uddin and Mohammad Saidul 'Islam Inheritance rights of women in Islamic law : An assessment' [2022] 2(2) *International Journal of Islamic Thought* 45-58.

⁷³⁹ A.O. Yekini, 'Women and intestate Succession in Islamic Law, Lagos State University, Islamic Law and Law of the Muslim World' (Research Paper Series, at New York Law School, No. 08-49, 2008)

⁷⁴⁰ CFRN 1999 (as amended), s 38(1).

⁷⁴¹ CFRN 1999(as amended), ss 275–279.

⁷⁴² J. Ezeilo and M.T Ladan and A.A Afolabi, 'Women's Aid Collective (Nigeria), & Women Advocates Research & Documentation Centre (Lagos, Nigeria)' In WARDC (eds) *Shari'a implementation in Nigeria : issues & challenges on women's rights and access to justice* (Women's Aid Collective (WACOL) ; Women Advocates Research & Documentation Centre WARDC 2008)

⁷⁴³ M.A Osho, 'Shariah Law and Religious Rights in a Multi-religious Society: examining its Introduction for Muslims in Western Nigeria' [2025] 14(2), *Bulletin of "Carol I" National Defense University* 128–153.

⁷⁴⁴ Stanley Ibe, 'Implementing economic, social and cultural rights in Nigeria: Challenges and opportunities' [2010] (1), *African Human Right Law Journal*, 197-211, 201.

⁷⁴⁵ Administration of Estates Law, Laws of Lagos State 2004, s 49.

⁷⁴⁶ Married Women's Property Act 1882 (UK).

law, in contrast to the communitarian nature of customary law systems. However, enforcement remains inconsistent due to the overlap with customary laws that often deny women inheritance rights, particularly in patrilineal communities in the South East and South West of Nigeria.⁷⁴⁷ Judicial decisions such as *Ukeje v Ukeje* have declared discriminatory customary inheritance rules as unconstitutional, affirming that denying daughters the right to inherit violates Section 42 of the 1999 Constitution of Nigeria (as amended), which guarantees freedom from discrimination.⁷⁴⁸ Nigeria's plural legal system comprising Islamic law, customary law, and common law creates tensions that complicate the realization of women's inheritance rights. While statutory and Islamic laws provide normative guarantees, customary law continues to exert significant influence, often to the detriment of women. The Constitution, though supreme, allows for the application of personal laws in civil matters, thereby legitimizing divergent inheritance norms.⁷⁴⁹

This pluralism, while accommodating Nigeria's religious and cultural diversity, entrenches unequal outcomes. Inheritance disputes often arise where statutory rights clash with communal expectations, particularly when women assert their legal entitlements against patriarchal resistance. As such, the normative basis for women's inheritance rights in Nigeria, though legally entrenched, remains a contested space between law and culture.⁷⁵⁰ Furthermore, although Nigeria is a signatory to various international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁷⁵¹ these instruments are rarely invoked in matters governed by personal or religious law. This legal and normative tension between religious mandates, customary systems, and international standards underscores the urgent need for mechanisms that bridge these gaps. Alternative dispute resolution (ADR), grounded in Islamic jurisprudence, may offer such a bridge by promoting both religious legitimacy and access to justice.

4. Barriers to Enforcement of Women's Inheritance Rights in Nigeria

Despite the clarity and legal authority of Islamic inheritance rules, numerous barriers hinder the effective enforcement of women's entitlements in Nigeria. One of the most significant is the entrenchment of patriarchal cultural practices that override or distort Islamic principles. In many Muslim communities, especially in rural and semi-urban areas, women are discouraged or even prohibited from asserting inheritance claims, often under the pretext of preserving family honour or unity.⁷⁵² These cultural attitudes are deeply rooted in customary norms that prioritize male succession and view property ownership by women as culturally inappropriate.⁷⁵³ Even where

⁷⁴⁷ J Clark, *Resilience, Conflict-Related Sexual Violence and Transitional Justice: A Social-Ecological Framing* (1st edn, Routledge, London 2020).

⁷⁴⁸ *Ukeje v Ukeje* (2014) 11 NWLR (Pt 1418) 384 (SC).

⁷⁴⁹ CFRN1999 (as amended), ss 36(12), 275.

⁷⁵⁰ Abdulmumini A. Oba, 'Religious and Customary Laws in Nigeria' [2011] 25 *EMORY INT'L L. REV.* 881-898, 890.

⁷⁵¹ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

⁷⁵² Brandon Kendhammer, *Muslims Talking Politics: Framing Islam, Democracy, and Law in Northern Nigeria* (The University of Chicago Press Chicago and London 2016)

⁷⁵³ Baderin Mashood A, 'Review of Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook' [2009], 5(1), *Muslim World Journal of Human Rights* 4-7; Nmehielle, Vincent Obisienunwo Orlu 'Sharia Law in the Northern States of Nigeria: To Implement or Not to Implement, the Constitutionality is the Question' 2004 *Human Rights Quarterly*, (26) (3) 730-759.

women are nominally acknowledged as heirs, their shares are often withheld, manipulated, or redistributed informally among male relatives.⁷⁵⁴

Another major impediment is the misinterpretation or selective application of Islamic law. Religious and community leaders who are often male may apply Sharia selectively, reinforcing patriarchal customs while ignoring the egalitarian spirit of Islamic inheritance jurisprudence.⁷⁵⁵ In some cases, they invoke religious authority to deny women their Qur'anic entitlements, falsely asserting that female heirs are spiritually or economically unfit to manage property.⁷⁵⁶ These distortions reflect a lack of rigorous Islamic legal education among mediators and a tendency to conflate religious principles with socio-cultural prejudice.⁷⁵⁷ Institutional weaknesses in Nigeria's legal system also contribute to the problem. Many women face procedural and logistical barriers in accessing Sharia courts or formal courts, including high legal costs, language difficulties, low legal awareness, and fear of social stigma.⁷⁵⁸ Additionally, judges and court staff may themselves exhibit gender biases or fail to enforce judgments against powerful male family members.⁷⁵⁹ Even in states where Sharia law is formally applied, inconsistent training of judges, limited jurisprudential resources, and absence of gender-sensitive protocols undermine effective adjudication of inheritance disputes involving women.⁷⁶⁰ Furthermore, there is a lack of trust in formal legal institutions, particularly among women from low-income and conservative households. Many prefer to settle disputes through informal or family-based mechanisms, which are rarely impartial and tend to reinforce existing power hierarchies.⁷⁶¹ While ADR methods like *sulh* theoretically offer a more accessible and culturally acceptable forum, these mechanisms are frequently male-dominated and lack enforceability when agreements are violated.⁷⁶² As such, even when women opt for ADR, they often face the same discriminatory outcomes as in customary courts. These multifaceted barriers; legal, cultural, institutional, and interpretative reveal that the problem is not simply one of doctrinal inadequacy, but of structural injustice. Addressing them requires more than legal reform; it demands a transformation of both normative frameworks and dispute resolution practices in ways that empower women to exercise their rights without fear or dependency.

⁷⁵⁴ Oba AA, 'Improving Women's Access to Justice and the Quality of Administration of Islamic Justice in Nigeria' In JN Ezeilo, MT Ladan & AA Akiyode (eds) *Shari'a Implementation in Nigeria Issues & Challenges on Women's Rights And Access to Justice* (WACOL, Enugu and WARDC, Lagos in collaboration with A.B.U Zaria with support from Heinrich Boll Foundation at Rockview Hotel, Abuja 2003) 44.

⁷⁵⁵ John Onaiyekan, 'The Sharia in Nigeria: Issues and Perspectives' [2000] (12) *BETH*, 69-87.

⁷⁵⁶ Hauwa Ibrahim, *Practicing Shariah Law: Seven Strategies for Achieving Justice in Shariah Courts* (American Bar Association 2012) 101-103.

⁷⁵⁷ Ibrahim Doi Abdur Rahman, *Shariah: The Islamic Law* (Ta-Ha Publishers 2008) 312.

⁷⁵⁸ Adetoun Ilumoka, 'African Women's Economic, Social and Cultural Rights: Towards a Relevant Theory and Practice' (2012) In Rebecca J Cook(eds) *Human Rights of Women : National and International Perspectives* (Philadelphia, Unveristy of Philadelphia Press, 2012) 307-325.

⁷⁵⁹ H.O Obi & O.C Aduma, 'Contemporary Judicial Response to Women's Succession and Inheritance Rights in Nigeria: A Heave to Gender Discrimination' [2020] (1), *African Customary and Religious Law Review* 42-48.

⁷⁶⁰ A. Christelow , 'Islamic Law and Judicial Practice in Nigeria: An Historical Perspective' [2002], 22(1), *Journal of Muslim Minority Affairs* 185-204, 190.

⁷⁶¹ M.A Osho, 'Shariah Law and Religious Rights in a Multi-religious Society: examining its Introduction for Muslims in Western Nigeria' [2025] 14(2), *Bulletin Of "Carol i" National Defence University*, 128-153.

⁷⁶² Othman, Aida. 'And Amicable Settlement Is Best: Sulh and Dispute Resolution in Islamic Law' [2007] (21) *Arab Law Quarterly* 64-90, 78.

5. ADR as a Mechanism for Resolving Inheritance Disputes

The increasing recourse to ADR mechanisms in Nigeria reflects growing dissatisfaction with the formal legal system's inaccessibility, cost, and complexity.⁷⁶³ In Muslim communities, *sulh* is a form of Islamic mediation rooted in reconciliation (*islah*) is one of the oldest and most respected means of settling personal and family disputes, including inheritance claims.⁷⁶⁴ The Qur'an and Hadith both encourage amicable settlement of disputes, with Qur'an 49:10 stating: "The believers are but brothers, so make settlement between your brothers. And fear Allah that you may receive mercy."⁷⁶⁵ This approach emphasises communal harmony, compassion, and justice, and offers the advantage of flexibility, confidentiality, and cultural acceptability.⁷⁶⁶

In practice, *sulh* allows disputing parties to resolve inheritance issues through dialogue facilitated by respected elders, imams, or community mediators, without resorting to litigation.⁷⁶⁷ This model resonates with Islamic notions of justice (*adl*) and equity (*ihsan*), and when properly applied, it can serve as a viable path for women to assert their inheritance rights in a non-adversarial environment.⁷⁶⁸ However, the practical implementation of *sulh* in Nigeria is fraught with limitations. Most informal mediators lack formal legal training and often uphold customary practices that conflict with Islamic inheritance law, particularly when it concerns female beneficiaries.⁷⁶⁹ Moreover, the informal nature of ADR processes means that settlements are not always legally binding or enforceable, especially when one party—usually the male heir reneges on the agreement.⁷⁷⁰ Another concern is the under-representation of women in the decision-making process. Most mediators and religious leaders are men, and women often lack the confidence or cultural permission to speak freely during proceedings.⁷⁷¹ In some cases, the proceedings replicate the very biases they are meant to circumvent, resulting in outcomes that reinforce gender inequality.⁷⁷² Despite these challenges, *sulh* and other ADR frameworks have significant potential to serve as culturally sensitive platforms for resolving inheritance disputes if

⁷⁶³ Chidi Anselm Odinkalu, 'Poor Justice or Justice for the Poor? A Policy Framework for Reform of Customary and Informal Justice Systems in Africa' [2006] (2) *The World Bank Legal Review, Law, Equity and Development* 141–165.

⁷⁶⁴ Othman Aida, 'And Amicable Settlement Is Best: *Ṣulḥ* and Dispute Resolution in Islamic Law' [2007], (21)(1) *Arab Law Quarterly*, 64–90, 82.

⁷⁶⁵ Qur'an 49:10.

⁷⁶⁶ Adamu Abubakar Muhammad and Ibrahim Dahiru Idriss and Adam Muhammad Ardo and Yakubu Zulaihat Muhammed, 'A Literature Review of Islamic Mediation (As-Sulh) As Mechanism for Settling Marital Dispute among Muslim Couples in Northeastern Nigeria' [2023], 5 (2), *Jurnal Bimbingan Konseling Islam* 175-190, 189.

⁷⁶⁷ Abdul Hak, Nora and Khan, Hanna, The Application of Sulh in Resolving Community Disputes (Paper presentation at in 1st World Congress on Integration and Islamicisation of Acquired Human Knowledge (FWCII-2013), Prince Hotel & Residence, Kuala Lumpur., August 24, 2013).

⁷⁶⁸ Mohammad Hashim Kamali, *The Dignity of Man: An Islamic Perspective* (Islamic Texts Society 2002) 102–103

⁷⁶⁹ Baba Isa Sanda Benisheikh and Aisha Sandabe and Yahaya Alhaji Dunoma, Family Dispute Mediation (Sulh) in Islamic Family Law: An Overview of Its Validity and Practice [2025] (2)(1), *Journal of Customary and Religious Law*, 48-66.

⁷⁷⁰ I. Walid, 'Dialogue and the Practice of Law and Spiritual Values: Courts, Lawyering and ADR: Glipses into the Islamic Tradition'[2001] (1) *Fordham Urban Law Journal*, 1035.

⁷⁷¹ Adetoun Ilumoka, 'African Women's Economic, Social and Cultural Rights: Towards a Relevant Theory and Practice' In Rebecca J Cook(eds) *Human Rights of Women : National and International Perspectives* (Philadelphia, University of Philadelphia Press, 2012) 307-325.

⁷⁷² Akpala, Ada, Sylvia, *Women's Rights are Human Rights* (Enugu: Snaap Press Ltd., 1998)24.

reformed and institutionalised.⁷⁷³ There is a growing consensus among scholars and legal practitioners that empowering women to access ADR processes through legal education, gender-sensitive training for mediators, and integration with the formal legal system could dramatically improve enforcement of Islamic inheritance entitlements.⁷⁷⁴ As such, ADR should not be viewed merely as an informal option, but as a strategic tool for realising justice in communities where litigation is often ineffective or inaccessible.

6. Empirical Findings and Case Analysis

To ground the doctrinal and theoretical claims in lived experiences, this paper conducted field-based research in selected Muslim communities across Nigeria, focusing on Kano (North West), Ilorin (North Central), and Lagos (South West). These locations were chosen to reflect regional diversity in the application of Islamic law, varying levels of Sharia court presence, and differing customary influences. Semi-structured interviews were conducted with Muslim women who had either been involved in inheritance disputes or were denied inheritance altogether, as well as with Islamic scholars, community leaders, and Sharia court officials.⁷⁷⁵

In Kano, where Sharia law is most entrenched, the application of Islamic inheritance rules is more formalised. However, findings revealed that social pressures and gender norms often prevent women from pursuing their claims. Some respondents reported being discouraged by family members or local clerics from filing cases in court, as doing so was seen as disrespectful or divisive.⁷⁷⁶ In one case, a widow who attempted to assert her Qur'anic share was advised by a community leader to "let the men handle it to keep peace in the family."⁷⁷⁷ In Ilorin, which has a hybrid system of Sharia and customary practices, women faced inconsistencies in enforcement. While some Sharia court judges upheld Islamic principles and ruled in favour of female heirs thus, implementation was often hindered by family resistance and weak court enforcement mechanisms.⁷⁷⁸ A Sharia court clerk admitted that, "Even when judgment is in the woman's favour, getting the family to comply is another issue entirely."⁷⁷⁹

In Lagos, where Sharia courts have no civil jurisdiction, inheritance disputes involving Muslims were generally decided under customary or statutory law. Respondents reported that Islamic principles were rarely followed, and that female heirs were routinely excluded unless they had strong male advocates within the family.⁷⁸⁰ Community mediators in Lagos acknowledged the role of *sulh*, but admitted that outcomes often mirrored local Yoruba customs rather than Qur'anic rules.⁷⁸¹ Additionally, most ADR mechanisms across the three locations lacked procedural safeguards to protect women's interests. Only in rare cases were women represented by

⁷⁷³ Hauwa Ibrahim, *Practicing Shariah Law: Seven Strategies for Achieving Justice in Shariah Courts* (American Bar Association 2012) 114.

⁷⁷⁴ A. Christelow, 'Islamic Law and Judicial Practice in Nigeria: An Historical Perspective' [2002], 22(1), *Journal of Muslim Minority Affairs*, 185–204, 190.

⁷⁷⁵ Author's field notes, interviews conducted in Kano, Ilorin, and Lagos between February and April 2025 (on file with author).

⁷⁷⁶ Interview with female respondent, Kano, 10 March 2025 (transcript on file with author).

⁷⁷⁷ Interview with community leader, Dala LGA, Kano, 12 March 2025

⁷⁷⁸ Interview with Sharia Court official, Ilorin West, 18 March 2025.

⁷⁷⁹ Interview with court clerk, Ilorin East, 19 March 2025.

⁷⁸⁰ Interview with female heir, Agege, Lagos, 25 March 2025.

⁷⁸¹ Interview with Islamic mediator, Lagos Mainland, 26 March 2025.

knowledgeable advocates or allowed to participate fully in discussions.⁷⁸² A common complaint was that ADR sessions, though informal, were male-dominated and conducted in a language or style that women found intimidating.⁷⁸³ The case law also reflects these empirical trends. In *Khalidu v Khalidu*,⁷⁸⁴ the Kano Sharia Court of Appeal affirmed a daughter's entitlement to a fixed Qur'anic share, but noted that community resistance delayed the actual distribution of assets. In *Asake v Asake*,⁷⁸⁵ the Kwara State Sharia Court ruled in favour of a widow's claim but found no legal recourse when her late husband's brothers defied the court order. Such cases highlight the disjunction between legal entitlements and practical enforcement, reinforcing the need for a multi-level reform approach that strengthens both formal and informal mechanisms for dispute resolution.

7. Conclusion, Recommendations and Reform Proposals

The right of Muslim women to inherit under Islamic law is both divinely ordained and legally recognised in Nigeria's plural legal system.⁷⁸⁶ Yet, in practice, this right remains elusive for many, due largely to a complex interplay of patriarchal norms, customary practices, limited awareness, and weak enforcement structures.⁷⁸⁷ As this study has shown, while Islamic legal texts provide for clear entitlements, the sociocultural context in which these rights are asserted often frustrates their realisation.⁷⁸⁸ Alternative Dispute Resolution (ADR), particularly Islamic forms such as *sulh*, presents a culturally resonant and accessible mechanism for resolving inheritance disputes in a gender-sensitive manner.⁷⁸⁹ However, the potential of these mechanisms is undermined by a lack of structure, male dominance in mediation, and inadequate legal safeguards.⁷⁹⁰ Formal courts too, including Sharia courts, have struggled to ensure compliance with judgments that favour women's inheritance claims due to limited institutional support and prevailing societal resistance.⁷⁹¹ This paper concludes that a reformist and integrative approach is required, one that strengthens the legal enforceability of women's inheritance rights, enhances the procedural fairness of ADR platforms, and fosters collaboration between formal legal institutions and community-based mechanisms.⁷⁹² Central to this reform is the role of Islamic scholars and community leaders in

⁷⁸² Adetoun Ilumoka, 'African Women's Economic, Social and Cultural Rights: Towards a Relevant Theory and Practice' In Rebecca J Cook(eds) *Human Rights of Women : National and International Perspectives* (Philadelphia, Unveristy of Philadelphia Press, 2012) 307-325.

⁷⁸³ Fatima L. Adamu, 'Mediating Gender Justice: Sulh and Women's Rights in Northern Nigeria' (2020) 6 *African Journal of Islamic Law* 84

⁷⁸⁴ *Khalidu v Khalidu* (2017) Kano Sharia Court of Appeal (unreported).

⁷⁸⁵ *Asake v Asake* (2019) Kwara State Sharia Court, Suit No. KW/SHC/31/2019

⁷⁸⁶ See Qur'an 4:7, 4:11–12; *Alhaji Balarabe Musa v. Alhaji Abubakar Musa* (1993) 5 NWLR (Pt 294) 510.

⁷⁸⁷ Hauwa Ibrahim, *Practicing Shariah Law: Seven Strategies for Achieving Justice in Shariah Courts* (American Bar Association 2012) 49–52.

⁷⁸⁸ Ekhtor, Eghosa Osa, 'Women and the Law in Nigeria: A Reappraisal', [2015], 16(2), *Journal of International Women's Studies*, 285-296.

⁷⁸⁹ Othman, Aida. 'And Amicable Settlement Is Best": Sulh and Dispute Resolution in Islamic Law' [2007] (21)(1) *Arab Law Quarterly* 64-90.

⁷⁹⁰ Olanrewaju, Oluwaseun 'Gender Identity and Justice in Nigeria: An Appraisal of Women in Lagos State,' (2018), (2)(1), *The Journal of Social Encounters*, 69-80.

⁷⁹¹ O. Anyanwu, 'Enforcing the Shari'ah in Nigeria: Women, Justice, and the Muslims' Collective Conscience' [2009] 26(3), *American Journal of Islam and Society*, 24–40.

⁷⁹² S. Hascall, 'Legal Pluralism and Shari'ah Law' [2011] 6 (6), *Spiritian Horizons*, 51-62, 55; A. A Oba, 'Harmonisation of Shari'ah, Common law and Customary Law in Nigeria: Problems and Prospects' [2019] 35, *Journal of Malaysian and Comparative Law*, , 119–146, 127.

promoting correct interpretations of Qur'anic inheritance principles and challenging cultural distortions that subvert gender justice.⁷⁹³

Ultimately, the full realisation of Muslim women's inheritance rights in Nigeria will depend not only on law and policy but also on a shift in societal attitudes and an inclusive approach to justice that aligns with both the letter and the spirit of Islamic law. Ensuring this alignment is critical, not only for upholding women's rights but also for preserving the integrity and relevance of Islamic legal principles in contemporary Nigerian society. To bridge the gap between Islamic inheritance law and the lived realities of Muslim women in Nigeria, a multi-pronged reform strategy is necessary. First, there must be greater legal literacy and public education on Islamic inheritance rights, particularly among women in rural and semi-urban communities.⁷⁹⁴ Many of the women interviewed during this research were unaware of their Qur'anic entitlements, or believed that customary practices were superior to Islamic prescriptions.⁷⁹⁵ Targeted sensitisation campaigns through mosques, women's groups, and radio programmes can help demystify religious laws and empower women to assert their rights.⁷⁹⁶

Second, the capacity and structure of ADR mechanisms particularly sulh must be strengthened.⁷⁹⁷ Islamic mediators, community leaders, and Sharia court officials should be provided with training on gender justice, the principles of Islamic inheritance law, and human rights standards.⁷⁹⁸ Such training will help ensure that mediators do not unintentionally perpetuate patriarchal norms under the guise of cultural or religious fidelity.⁷⁹⁹ Furthermore, integrating women as neutral mediators or observers in ADR processes could enhance inclusivity and reduce gender bias.⁸⁰⁰ Third, linkages between informal ADR and formal legal institutions should be institutionalised.⁸⁰¹ Agreements reached through sulh should be subject to legal registration or endorsement by a competent authority, such as a Sharia or Customary Court, to make them enforceable.⁸⁰² This hybrid model would preserve the flexibility of traditional mediation while ensuring legal accountability and remedy in cases of breach.

Fourth, state and federal policymakers should revisit the plural legal framework governing inheritance in Nigeria. In states applying Sharia law, clearer procedural rules and enforcement

⁷⁹³ Abdullahi An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard University Press 2008) 143.

⁷⁹⁴ Hauwa Ibrahim, *Practicing Shariah Law: Seven Strategies for Achieving Justice in Shariah Courts* (American Bar Association 2012) 131.

⁷⁹⁵ Field interview with female respondent, Ilorin, 17 March 2025 (transcript on file with author).

⁷⁹⁶ Zakia Salime, 'Mobilizing Muslim Women: Multiple Voices, the Sharia, and the State' [2008] (28) (1) *Comparative Studies of South Asia, Africa and the Middle East* 200–211, 205.

⁷⁹⁷ A. Christelow, 'Islamic Law and Judicial Practice in Nigeria: An Historical Perspective' [2002], 22(1), *Journal of Muslim Minority Affairs*, 185–204, 190.

⁷⁹⁸ F. L. Adamu and O.J Para-Mallam 'The role of religion in women's campaigns for legal reform in Nigeria' [2012], 22(5–6), *Development in Practice*, 803–818, 311.

⁷⁹⁹ Ibid.

⁸⁰⁰ S. S. Shah, 'Mediation in Marital Discord in Islamic Law: Legislative Foundation and Contemporary Application' [2009] (23) (3), *Arab Law Quarterly*, 335.

⁸⁰¹ S Salim and N.A Hak, 'Family Mediation and Sulh: An Alternative Dispute Resolution in Malaysia' [2010] (7), *International Journal of Social Policy and Society*, 40.

⁸⁰² A. Othman, 'And Amicable Settlement Is Best: Sulh and Dispute Resolution in Islamic Law' [2007], (21), *Arab Law Quarterly*, 65.

mechanisms should be introduced to give effect to judicial decisions favouring women.⁸⁰³ In other states, recognition of Islamic family law principles—where voluntarily chosen by parties—should be formalised, thereby avoiding the marginalisation of religiously grounded rights.⁸⁰⁴ Finally, Islamic scholars and religious leaders must play a more proactive role in addressing the gap between doctrine and practice. Sermons, fatwas, and religious education curricula should reaffirm the justice-oriented spirit of Islamic inheritance law and denounce distortions that disadvantage women.⁸⁰⁵ When scholars lend their authority to progressive interpretations that align with Qur’anic injunctions, it becomes easier to displace entrenched customs that undermine gender equity.

⁸⁰³ M. Naeem. M and M.H Khan, ‘Alternative Dispute Resolution from the Perspective of Islam,’ [2007], (5) (1) *Acta Islamica*, 4.

⁸⁰⁴ Ibrahim Buba, ‘Islamic Law and Plural Legalism in Nigeria: Rethinking Harmonisation’ (2021) 13(1) *Journal of Comparative Legal Systems* 33; M.M Qafish. M. M., ‘Restorative Justice in the Islamic Penal Law;; A Contribution to the Global System’[2012], (7) (1), *International Journal of Criminal Justice Science*, 49; . D. Y., Andrew ‘A Water Spring in the Desert: Advancing Human Rights within Sharia Tribunals, Suffolk,’ [2011] (35), *Transnational Law Review*, 101.

⁸⁰⁵ Abdullahi An-Na’im, *Islam and the Secular State: Negotiating the Future of Shari’a* (Harvard University Press 2008) 142.

LIMITING LIABILITY TO ESCAPE ACCOUNTABILITY: A COMPARATIVE ANALYSIS OF AUDITORS IN THE USA AND NIGERIA

Sulaiman Abdussamad*

Abstract

The auditing profession is saddled with a crucial role in financial markets. Auditors are the independent third parties that assure regulators, creditors, and investors about the accuracy of financial statements and whether such statements represent the accurate and fair view of the company's financial position. However, when auditors fail in undertaking this responsibility, as seen in cases of Enron in the United States and Cadbury Nigeria Plc's overstating its financial statements, such failures can provoke a monumental financial and reputational damage that would undermine market stability and deplete public trust. Often, investors sue auditors for financial loss due to relying on the erroneous financial statements. In the face of this reality, auditors have increasingly called for legal reforms to limit their liability and save them from an existential threat. This article examines auditor liability legal and regulatory regimes in Nigeria and the United States. It analyses recent developments, and evaluates the legitimacy of liability limitation efforts. It proposes that while a degree of liability protection is necessary, it must not be used to avoid responsibility for professional failure.

Keywords: Auditors, Liability caps, Nigeria, United States

1.0 Introduction: Towards a Liability Gap

Audit liability has recently become an increasing concern for the auditing profession. In a flurry of activities following Enron's spectacular disintegration, the profession has witnessed significant transformation of its market structure, expansion in its duties vis-à-vis public companies, and the creation of a new regulatory oversight apparatus, especially in the US.⁸⁰⁶ As is usual with financial turmoil, this exacerbated the longstanding polemic about the public's discontent with the actual nature and scope of audit work.⁸⁰⁷ Rather than improving audit quality, the audit profession countered with claims about an inequitable reliance on auditors' deep pockets. These facts, coupled with large claims and the escalating cost of indemnity insurance cover, provoked a great deal of lobbying by firms for changes in the law to limit their liability exposure, an exposure that some claim threatens the very viability of the industry. They aver that outmoded corporate liability laws have made them disproportionately liable for a company's financial negligence, and that a major class action suit could vaporise another global accounting firm, even with a minor contribution to the company's problem.

* LLB, BL, LLM, PhD, Senior Lecturer, Faculty of Law, Baze University, Abuja Tel: +234 9027 782 888. Email: samadlx@yahoo.com

⁸⁰⁶ Thus, for example, while the *Private Securities Litigation Reform Act of 1995* (PSLRA) shifted to proportionate from joint liability for auditors, the *Sarbanes-Oxley Act* imposes new demands on auditors that increase liability risk, including through new audits of internal control over financial reporting.

⁸⁰⁷ Anastassia Samsonova, *Re-thinking Auditor Liability: The Case of the European Union's Regulatory Reform* (2010) 2 http://apira2010.econ.usyd.edu.au/conference_proceedings/APIRA-2010-241-Samsonova-Re-thinking-auditor-liability.pdf accessed 7 May 2025.

Some reforms in the US have permitted limiting auditors' liability, but the Nigerian Companies and Allied Matters Act 2020 (CAMA) does not impose joint liability on auditors unless proven in court. However, US case law, such as *Ultramares Corp v Touche*, has long protected auditors from third-party suits without privity.⁸⁰⁸ However, some quarters are concerned that the auditing industry is campaigning for liability concessions to protect itself from possible lawsuits resulting from its failures. Thus, the industry is responding to an expanding expectation gap by filling the liability gap.

2.0 Policy Debate Over Catastrophic Risk to Auditors

Increased market capitalisation of companies during the last decade has significantly increased the risk of auditing such companies. At the same time, auditors' access to insurance has fallen sharply, especially for firms auditing international and listed companies, thus leaving partners in audit firms with an unattractive prospect of entirely bearing the liability risks themselves. This situation has inspired academic and professional debate over the equitable nature of auditor liability and the potential risk that a successful lawsuit against the auditors could serve to bring down one of the major audit firms. A hard call indeed for politicians and regulators alike against the backdrop of a financial crisis that is yet to abate; with prominent Wall Street firms collapsing and disappearing, almost overnight; the federal government engaged in serial bailouts of financial troubled institutions; and the recent passage by the US government of a financial reform that essentially toughens the regulatory oversight on the entire financial services industry.

In this volatile and changing landscape, proposals for liability reform have received scant attention from U.S. regulators, as the more pressing business of the "credit crunch" commanded their attention.⁸⁰⁹ Having said that, although governments and regulators have had their attention diverted by a severe financial crisis that has gripped their economies, it is reasonable to argue that the debate over the fairness or otherwise of auditors' civil liability and the existential threat it poses to the audit profession is a continued and recurrent debate that is as old as the modern audit itself.⁸¹⁰ This fact is seen in two similar opinions that spanned about half a century apart:

The problem confronting the profession is to see to it that the liability is 'clearly defined', and that the extent of damages bears some reasonable relationship to the gravity of the accountant's offence.⁸¹¹

We would not suggest that auditors should be freed from the threat of liability – as outlined earlier; exposure to liability is a driver of quality and should remain. But there needs to be some additional recognition of the fact that auditors do not 'guarantee' the accuracy of a company's accounts or the

⁸⁰⁸ 174 NE 441 (NY 1931)

⁸⁰⁹ J Craig Dickey, 'Auditor Liability 'Caps'—The Politics of Catastrophe' (2008) 5 *Securities Litigation Report* 3.

⁸¹⁰ Christopher Humphrey and Anastassia Samsonova, 'A Crisis of Identity? A Juxtaposing Auditor Liability and the Value of Audit' in Roberto Di Pietra, Stuart McLeay and Joshua Ronen (eds), *Accounting and Regulation: New Insights on Governance, Markets and Institutions* (Springer 2014) 112.

⁸¹¹ J L Carey, *The CPA Plans for the Future* (American Institute of Certified Public Accountants, New York 1965) 415.

integrity of the underlying records and that, in some cases, auditors can and are deceived by directors and management. We agree that auditors should be responsible for their own mistakes, but query whether they should be also held responsible for the failings, or wilful deceit, of other.⁸¹²

As seen here, the audit profession has complained about the continued rise of litigation against its members by clients and other non-clients alike who have relied on their audit reports in making investment decisions.⁸¹³ However, the audit profession's detractors would retort that such activity only shows dwindling public confidence in auditors' ability to perform their duties properly.⁸¹⁴ The latter point of view may be substantiated by the two notable collapses directly linked with audit failure: Enron in 2001 and Lehman Brothers in 2008. The profession would, nonetheless, emphasise that these are isolated cases that do not reflect its general performance in the myriad other companies it audits. Moreover, the level of litigation they face is inequitable and untenable, and they claim that it presents a risk of Armageddon to the profession.⁸¹⁵ The US Treasury's Advisory Committee on the Auditing Profession (2008) has warned that unchecked liability exposure could destabilise the profession. The Institute of Chartered Accountants of Nigeria (ICAN) and other professional bodies in Nigeria have echoed similar arguments, emphasising the necessity of reform for companies to attract and retain auditors.

In support of their argument, the auditors have cited some record claims brought against them in recent memory, like the £2 in case of the British insurance company Equitable Life against Ernst and Young and the \$1bn claim brought against KPMG for the audit of the failed New Century Financial, as good examples of the real existential threat the profession is faced with if such kinds of litigation were to succeed.⁸¹⁶ The auditing profession claims that the over-liability threat is underpinned by its desire to fight against what it considers an unfair regulatory policy behind the 'epidemic of litigation' it endures, i.e., joint-and-several liability, which is discussed below.⁸¹⁷

⁸¹² J Davies, 'A Sharper Shield' (ACCA, 1 October 2014) <https://www.accaglobal.com/gb/en/discover/articles/audit-assurance/sharper-shield.html> accessed 13 March 2015.

⁸¹³ R Di Pietra, S McLeay and J Ronen (eds), *Accounting and Regulation: New Insights on Governance, Markets and Institutions* (Springer 2014) 112.

⁸¹⁴ *ibid*

⁸¹⁵ *ibid*

⁸¹⁶ *ibid*

⁸¹⁷ Joint and several liability presupposes that if several parties are liable for damages, the claimant can choose to sue all of the parties or one of them for the whole loss suffered. Therefore, in the case of financial loss concerning errors in the financial statements, if both directors and auditors are liable for the loss sustained, the claimant may elect to sue the directors or auditors for the loss, irrespective of who may be more culpable. More often than not, auditors are sued and left to bear the full brunt of the damages awarded to the claimant, perhaps because auditors are best placed to pay because of their 'deep pockets.'

2.1 Joint and Several Liability: Liability Expansion

The doctrine of joint-and-several liability was initially developed at common law as two separate theories of liability.⁸¹⁸ The application of joint liability at common law was strictly limited, applying only to joint tortfeasors who had conspired or acted in concert. However, if the parties did not act in concert, the law would not permit joinder, and joint liability was disavowed.⁸¹⁹ Joint liability *stricto sensu* is originally related to issues of intentional torts because of the higher degree of intent involved in planning or acting in concert.⁸²⁰ Accordingly, in an action for recovery of damages where a plaintiff was injured due to the acts of two or more tortfeasors who did not act in concert, the plaintiff may sue any or all of the parties individually and recover the damages. However, since they did not act in concert, the plaintiff cannot join all the parties in one suit during the early stage of the doctrine's development.⁸²¹ In addition, if the plaintiff recovers damages from one of the parties, he cannot proceed against the other defendants. For this reason, when filing their first claim, shrewd plaintiffs usually target defendants in a financially strong position to shoulder the damages.⁸²² These types of defendants came to be known as deep-pocket defendants.⁸²³ Furthermore, since recovery could be obtained from any individual defendant irrespective of the defendant's degree of culpability, once the plaintiff recovers all of his or her damages in the first suit, he or she would not need to proceed further against the other defendants. This is an excellent strategy from a procedural law standpoint that is both time-saving and efficient.⁸²⁴

The early American cases followed the position of English courts in denying joinders, except in cases where the defendants acted in concert and a few other circumstances, like mutual responsibility for the same act. The American attitude was completely altered by the passage of the Field Code Act in 1848 in New York, where the law required joinder of all questions connected with one subject matter in a single suit. As the doctrine developed over time, so did its application by courts, allowing plaintiffs to join different defendants in a single suit so long as the harm produced by their separate negligent acts is indivisible, as in the case of *Smithson v Garth*.⁸²⁵ Moreover, the plaintiffs were free to choose how they deemed expeditious to recover from the defendants, and one defendant had no legal right to seek

⁸¹⁸ R Mednick and JJ Peck, 'Proportionality: A Much-Needed Solution to the Accountants' Legal Liability Crisis' (1994) 28 *Valparaiso University Law Review* 872 <http://scholar.valpo.edu/vulr/vol28/iss3/3> accessed 7 May 2025.

⁸¹⁹ *ibid* 873.

⁸²⁰ *Smithson v Garth* (1691) 3 Lev 324, 83 ER 711.

⁸²¹ (n 13) 872. Moreover, an action against one of the tortfeasors automatically bars any further action against the rest of the tortfeasors.

⁸²² *ibid* 873.

⁸²³ *ibid*

⁸²⁴ *ibid*

⁸²⁵ (1691) 3 Lev 324, 83 ER 711. In this case the defendants acted in concert to rob the plaintiff, although one battered him, another imprisoned while the robbed him all were held jointly and severally because the cause of action was one.

contribution from other defendants.⁸²⁶ The practice of joining defendants who acted separately but whose actions created one indivisible harm gained notoriety among plaintiffs for its simplicity from a procedural standpoint. The concept of joint-and-several liability came to be enshrined as an integral part of the tort system.⁸²⁷

The challenges in apportioning liability led to contributory negligence, in which the plaintiffs must demonstrate to the court that they have not contributed to the damage they suffered.⁸²⁸ The doctrine of contributory negligence was introduced to the US in 1824 via the Massachusetts case *Smith v Smith*.⁸²⁹ The doctrine rapidly gained acceptance in nineteenth-century American jurisprudence, probably to protect America's young and growing industrial base, especially the railways. The doctrine functions as a penalty to deny recovery to the plaintiff for his lack of care.⁸³⁰ Usually, once the court decides that the defendants were negligent, the next question is how much damage the defendants should collectively pay, rather than the individual defendant's degree of culpability.⁸³¹ It is poignant to point out that some states in the United States eventually adopted the concept of "comparative liability" to alleviate the excesses of joint-and-several liability. Pursuant to the application of "comparative liability", the percentage of the individual defendant's fault was used to determine the amount he paid, known as comparative contribution. This rule apart, each defendant is, *ipso facto*, still liable for the full amount of damage to the plaintiff, regardless of the percentage of fault assigned.⁸³²

Auditors believe that the system of joint-and-several liability if not checked is capable of crippling the auditing profession. Moreover, they argue that if harm can be apportioned amongst multiple tortfeasors, it is only equitable that a single tortfeasor should be liable to the extent of his/her fault. Auditors sustain that the likely scenario is that they are the ones left to shoulder the entire burden, as the equitable distribution of judgment award is often sacrificed because of the complex and challenging task of aligning the degree of each of the tortfeasor's liability to the proportion of his/her fault.⁸³³ In addition, auditors claim they are targets of unjustifiable litigation because they were held liable under a mere negligence standard. This contrasts with company directors and officers, often protected by the business judgment rule, which

⁸²⁶ (n 13) 873.

⁸²⁷ *ibid*

⁸²⁸ This is a defence mechanism employed in tort by defendants in common law jurisdictions to either completely bar the claim or minimise the damages to be paid by showing that the defendant has also been negligent. See *Godwin v Atlantic Coast Line R.R.*, 220 F2d 242 (4th Cir 1955), where the court held that the plaintiff had no action against the defendants for his contributory negligence.

⁸²⁹ 19 Mass. 621 (1824)

⁸³⁰ WBL Little, 'Contributory Negligence as a Bar to a Claim for Breach of the Implied Warranty of Merchantability' (2008) 30 *Campbell Law Review* 90.

⁸³¹ *ibid*

⁸³² (note 13) 874.

⁸³³ T R Manisero and C Salem, *The Common Law Doctrine of Joint and Several Liability and the Realistic Implications of the 'Deep Pocket' Rule* (Wilson Elser 2014) 1 http://www.wilsonelser.com/files/repository/NatJointSevLiability_Manisero.pdf accessed 10 May 2025.

incorporates a gross negligence standard.⁸³⁴ Thus, given the different standards applied to accountants and directors, there may be circumstances in which auditors are found liable while the company's directors are exculpated.⁸³⁵ This argument re-echoes the concern expressed by the Supreme Court of California in *Bily* as follows:

An award of damages for pure economic loss suffered by third parties raises the specter of vast numbers of suits and limitless financial exposure.... The auditing CPA has no expertise in or control over the products or services of its clients or their markets; it does not choose the client's executives or make its business decisions; yet, when clients fail financially, the CPA auditor is a prime target in litigation claiming investor and creditor economic losses because it is the only available (and solvent) entity that had any direct contact with the client's business affairs.⁸³⁶

Auditors also become liable because they are the only solvent parties when a business goes bankrupt.⁸³⁷

Larger audit firms have become litigation targets because of the substantial capital they have built up. These firms' assets and insurance coverage have made them vulnerable to what is now referred to as the "deep pocket" theory. Auditors believe the "deep pocket" syndrome is the forbear of the much-dreaded doctrine of joint-and-several liability.⁸³⁸ Under this doctrine, even though auditors may be less culpable for the plaintiff's loss, they are liable for the entire amount of damage if found negligent. This, in turn, encourages plaintiffs to go after the auditors directly because of their deep pockets.⁸³⁹

Another reason auditors are being targeted is perhaps that the public is looking for someone to hold responsible for their loss. According to Smith, moments of crisis are usually followed by low public perception of professionals, like auditors, who were, in principle, deemed partly responsible for it.⁸⁴⁰ As is typical with a crisis, public outrage somehow fuels an increase in lawsuits against auditors, which sometimes helps to satisfy the public's desire for retribution. In addition, auditors have been sued for performing at a substandard level, fraudulently colluding with the company, or making it easier for the company's management to deceive investors and regulators.⁸⁴¹ However, the Private Securities Litigation Reform Act (PSLRA) 1995 introduced proportionate liability in the US to ameliorate joint and several liability except for fraud cases. On the other hand, the courts in Nigeria are circumspect in applying joint liability to auditors. They mainly require the proof to be directly linked to the auditor's work or grossly

⁸³⁴ B Smith, 'The Professional Liability Crisis and the Need for Professional Limited Liability Companies: Washington's Model Approach' (1995) 18 Seattle University Law Review 568.

⁸³⁵ *ibid*

⁸³⁶ 834 P.2d 763 (1992).

⁸³⁷ B Smith, 'The Professional Liability Crisis and the Need for Professional Limited Liability Companies: Washington's Model Approach' (1995) 18 Seattle University Law Review 557, 568.

⁸³⁸ *ibid*

⁸³⁹ *ibid*

⁸⁴⁰ *ibid*

⁸⁴¹ *ibid* 569.

negligent. The Supreme Court reiterated this position in *Okeowo v Migliore*, stating that professional advisers, including auditors, owe a duty of care that could lead to liability if breached.⁸⁴²

2.2 Auditors Cashing in on Proportionate Liability

The grouse of auditors with liability litigations is based on a simple and common legal notion that damages are apportioned in accordance with a party's fault. As trite and logical as this precept may sound, it is untenable under tort liability claims against auditors because of the doctrine of joint-and-several liability.⁸⁴³ Consequently, a plaintiff in a claim for damages may proceed against any tortfeasor of his or her choice to recover the entire amount of his or her loss, with no regard whatsoever to the defendant's contribution to the loss. Thus, if an auditor who audits a company fails to detect a fraud by the company's director, the claimant can sue either the auditor or the director to recover their full loss, irrespective of who is more culpable of the two. In practice, the auditor is always sued because of the capacity he or she has to shoulder the bill.⁸⁴⁴ For this reason, auditors are often forced to settle an unwarranted claim to avoid the arduous task of litigation, potentially resulting in unlimited liability exposure.⁸⁴⁵

In addition, juries in the United States, like the general public, have difficulty overcoming the assumption that auditors investigate and validate all the transactions undertaken by their clients. This difficulty faced by "deep pocket" defendants in convincing a jury that an auditor's function is not necessarily equivalent to detecting all the errors in clients' financial statements often propels auditors to opt for settling an unwarranted claim.⁸⁴⁶

Overwhelmed by disproportionate liability regimes, auditors have sought a statutory reform to replace joint-and-several liability with a more constrained arrangement, such as capped or proportionate liability.⁸⁴⁷ This method involves setting a cap on the damages a potential claimant can claim against the auditor or requiring that damages awarded be measured proportionally to the auditor's fault. With this proposition, the audit profession embarked on an active campaign, engaging political actors and regulators in their cause of reform at the national and international levels. However, the success of those efforts has been mixed so far.⁸⁴⁸

⁸⁴² [1979] 11 SC 138

⁸⁴³ (n 28) 867.

⁸⁴⁴ The auditor may seek a contribution from other co-defendants for an equitable amount, but the co-defendants are often unable to meet this liability. In the end, liability is imposed upon the defendant who has the means and is better placed to pay rather than the most negligent.

⁸⁴⁵ (n 32) 569.

⁸⁴⁶ *ibid*

⁸⁴⁷ (n 8) 113.

⁸⁴⁸ *ibid* 114.

Whereas some countries, especially in the aftermath of the Enron scandal, have re-examined their rules governing auditors' liability, others have adamantly refused to limit auditors' liability.⁸⁴⁹ In the United States, for example, auditors cannot contractually limit their liability for negligence, as evidenced in the philosophy behind the passage of the Sarbanes-Oxley Act; this situation is not likely to change anytime soon.⁸⁵⁰ Similarly, under Spanish law, auditors' liability is tortious, and third parties' rights cannot be limited by contract.⁸⁵¹

Auditor liability litigation in the United States has long been a concern since the early 1970s. The influx of liability litigation during this period is partly attributed to the provision of section 10(b) of the Securities Exchange Act of 1934, which prohibits fraud in transactions involving the sale or purchase of securities.⁸⁵² This section invariably creates liability far beyond fraud to include any misstatement or omission of a material fact or any relevant information that would be important to investors in deciding to buy or sell stock. Because of its broad application, the Exchange Act antifraud provision has been used against all kinds of behaviour, from misleading statements in company filings to documents used to sell securities. Moreover, under Title 18 of the US Code, investors may sue for fraudulent statements in a company's periodic filings with the SEC. Although difficult to prove, Title 18 gives investors a private right of action. It is advantageous because it creates potential liability for many defendants, including those who made the fraudulent statement, "control persons," and their aiders and abettors. This fact and liability insurance coverage enjoyed by auditors made them convenient litigation targets.

The legal theory of aiding and abetting soon became the basis of a flurry of liability actions even by individuals remotely associated with selling and purchasing securities. While securities actions can be said to represent only a fraction of liability claims brought against auditors, these suits generally popularised claims against auditors and opened the floodgates of litigations against auditors. Auditors, particularly, have become litigation targets because of the nature of their work. They are called to evaluate and exercise considerable judgment on materials and documents prepared by others in an environment not fully controlled by them. The complex scenario of an auditor's work was well explicated by the Supreme Court of California in the case of *Bily* as follows:

An auditor is a watchdog, not a bloodhound. As a matter of commercial reality, audits are performed in a client-controlled environment. The client typically prepares its own financial statements; it has direct control over and assumes primary responsibility for their contents ... [and]

⁸⁴⁹ As a result of the auditing profession's successful lobbying campaign, countries like Australia, Belgium, and Germany have adopted some statutory measures to limit auditors' liability.

⁸⁵⁰ Lee Roach, 'Auditor Liability: Liability Limitation Agreements (Part 2)' (2010) 31 *The Company Lawyer* 177.

⁸⁵¹ Third parties' rights are guaranteed under article 1902, and the same cannot contract away. Any applicable cap to liability in Spain must be by the adapted provisions of the 8th Directive to be discussed further.

⁸⁵² (n 8) 119.

necessarily furnishes the information base for the audit...Thus, regardless of the efforts of the auditor, the client retains effective primary control of the financial reporting process.⁸⁵³

The auditor must follow the requirements of Generally Accepted Accounting Standards (GAAS) in examining the audit materials and documents. Likewise, in reaching an opinion on the audit, he or she must be guided by Generally Accepted Accounting Principles (GAAP). These guidelines are set rules written in general terms, and their application is fundamentally based on the individual auditor's experience and professional judgment. Investors and the general public may seek a flawless or perfect audit, but by its nature, it is an exercise of estimation and judgment. Therefore, it is hardly ideal.

Thus, in the *locus classicus* of *Bily v Arthur Young & Co.*, the California Supreme Court reasoned that "an audit report is not a simple statement of verifiable fact that, like the weight of the load of beans...can be easily checked against uniform standards of indisputable accuracy. Rather, an audit report is a professional opinion based on numerous complex factors. The court went on to conclude that the audit report is "the final product of a complex process involving discretion and judgment on the part of the auditor at every stage. Using different initial assumptions and approaches, different sampling techniques, and the wisdom of 20-20 hindsight, few CPA audits would be immune from criticism."⁸⁵⁴ In other words, audit is "as much an art of judgment and experience as an axiomatic set of procedures."⁸⁵⁵ Nigeria has slowly adopted formal proportionate liability standards, though judicial trends suggest a movement in that direction. Nigerian courts are inching toward a framework that mirrors the US approach by emphasising contributory negligence and fault allocation.

3.0 Early Legislation to Stem Liability Claims

Auditors have long complained about the disproportionate threat they face. Although for some analysts, the threat of litigation is another means of enhancing auditors' professional responsibility, thereby increasing the reliability of financial information. Nevertheless, "the threat of class action securities fraud litigation creates great financial risk for the profession," and auditors cannot find insurance.⁸⁵⁶ Thus, even before the advent of the SOX, the accounting industry sought relief from the US Congress from litigation targeting deep-pocket defendants. As indicated earlier, "auditors are a favoured target of trial lawyers because any faulty judgment on the part of auditors may result in large monetary settlements. Accountants were also concerned about abusive discovery practices that imposed such burdensome costs that expensive settlements often were necessary."⁸⁵⁷ Thus, in 1991, the audit firms successfully lobbied various states to

⁸⁵³ *Bily v Arthur Young & Co.*, 834 P.2d 745 (Cal. 1992) at 762.

⁸⁵⁴ *ibid* 763.

⁸⁵⁵ (n 28) 883.

⁸⁵⁶ T C Pearson and G Mark, 'Investigations, Inspections, and Audits in the Post-SOX Environment' (2007) 86 Neb. L. Rev. 43, 50.

⁸⁵⁷ *ibid*

pass enabling legislation to establish a Limited Liability Partnership (LLP). Traditionally, audit firms practised as unlimited liability partnerships in which all the firm's assets and partners' assets were at risk once the firm was found liable by a court of law.⁸⁵⁸ On the other hand, the liabilities of audit partners in a limited liability audit firm are limited to their contribution to the firm's capital. Almost all audit firms in the US are now LLPs.⁸⁵⁹

The second stage of this development was the audit firms' effort to reform joint-and-several liability, which was also rewarded by the US Congress overriding a presidential veto and passing the *Private Securities Litigation Reform Act* (PSLRA) in 1995.⁸⁶⁰ The PSLRA was primarily an effort to prevent meritless "strike suits." It partially succeeded because it altered the nature of securities litigation against companies and auditors. Large institutional shareholders became more involved in securities class actions because the PSLRA ceded control of such actions to the most significant investor. The PSLRA minimised the exposure of external auditors by establishing a proportional liability system that reduced the potentially devastating consequences of joint-and-several liability.⁸⁶¹

The PSLRA deterred both nuisance litigation and some unmeritorious cases. Further, the Act served as a precursor to SOX by expanding the legal reporting responsibilities of auditors. For the first time, statutory law required some specific "audit procedures," including procedures reasonably designed to detect material illegal acts related to the financial statements of public companies.⁸⁶² This was followed in 1998 by the *Securities Litigation Uniform Standard Act* (SLUSA). These laws, the LLP laws at the state level and the PSLRA and SLUSA at the national level, restricted claims to a proportionate liability model, except in cases where auditors commit a criminal offence, joint-and-several liability remains.⁸⁶³ In Nigeria, the CAMA 2020 offered a general framework for auditor responsibilities but imposed few punitive measures for failures. Recent amendments have introduced stricter reporting obligations, yet enforcement remains inconsistent.

4.0 Global Dimension of the Liability Crisis

Over the years, the debate for reducing auditors' liability exposure has taken a global centre stage, and this was only reinforced by the large corporate scandals at the beginning of the twenty-first century in Europe, such as Ahold in Holland, Nordisk Fjer in Denmark, and Parmalat in Italy and the U.S., most famously,

⁸⁵⁸ This liability was joint and several, exposing audit partners to respond to the liability obligations of their bankrupt co-defendants in fraud cases.

⁸⁵⁹ Trevor Bush, Stella Fearnley and Shyam Sunder, 'Auditor Liability Reforms in the UK and the US: A Comparative Review' (2007) 8 <http://depot.som.yale.edu/icf/papers/fileuploads/2575/original/07-33.pdf> accessed 11 May 2025.

⁸⁶⁰ (n 50) 51.

⁸⁶¹ *ibid*

⁸⁶² *ibid* 52.

⁸⁶³ (n 53) 10.

Enron.⁸⁶⁴ This conspiracy of problems has caused great anxiety over the scope of auditor liability, which led to a declaration in some quarters, at various times, to ‘an epidemic of litigation’⁸⁶⁵, an ‘outrageous level of current claims’⁸⁶⁶ and even a possibility that ‘many audit firms face the risk of Armageddon’.⁸⁶⁷

This fear, coupled with the common belief within the accounting profession that liability claims against them are disproportionate to their fair share of the blame, led to the introduction of liability limitation clauses in audit contracts by auditors to protect themselves. As indicated above, in the US, the profession had successfully lobbied and secured the passage of LLP. The British government also approved the Limited Liability Partnership Act 2000 LLP option. In Spain, liability limitation through contract is not a novelty. Under Article 23, RAC auditors can negotiate and include liability limitation clauses in their contracts. According to Crespo, these clauses are justified because of increased liability claims against auditors, which eventually raise their professional insurance premiums.⁸⁶⁸ However, the liability clauses must not affect the rights of third parties under Article 1902 CC.⁸⁶⁹

The industry’s concern for the ‘liability epidemic’ was echoed through several pronouncements by influential professional bodies. In 1995, the International Federation of Accountants.⁸⁷⁰ For instance, it issued a report that presented the results of a comprehensive survey involving member organisations in 36 nations. The report summarised the members’ views on the legal liability regimes adopted in their countries. It used these to make a case for international regulatory action to establish clear and consistent limits on auditor liability.⁸⁷¹ It was argued that in those countries with unlimited liability regimes, such as the US or Australia, the public conceptions of the roles of an auditor were distorted and often unrealistic, fuelling excessive litigation activity against auditors. In contrast, limited liability environments maintained in other countries were seen to facilitate greater efficiency in auditors’ work, while serving the public interest through rigid enforcement and compliance practices.⁸⁷²

5.0 Developments in the European Union (EU)

Although individual EU countries’ positions vis-à-vis auditor liability have been diverse, the Eighth Company Law Directive on Statutory Audit did not deem it necessary to intervene. The Directive, designed to promote the Single Market principle by providing a uniform framework for the delivery of audit services, made no specific reference to auditors’ responsibilities, nor did it define the circumstances

⁸⁶⁴ S M Spell, ‘Capping Auditor Liability: Unsuitable Fiscal Policy in Our Current Financial Crisis’ (2010) 4 *Brooklyn Journal of Corporate, Financial & Commercial Law* 323, 332.

⁸⁶⁵ Arthur Andersen & Co and others, *The Future of Financial Reporting* (1992) 19.

⁸⁶⁶ Institute of Chartered Accountants of Alberta, *Opportunity, Equity and Fairness* (ICAA 1995) 11.

⁸⁶⁷ Giles Ward, ‘Auditors’ Liability in the UK: The Case for Reform’ (1999) 10 *Critical Perspectives on Accounting* 388.

⁸⁶⁸ María Otero Crespo, *La Responsabilidad Civil del Auditor de Cuentas* (Aranzadi Thomson 2013) 213.

⁸⁶⁹ *ibid* 371.

⁸⁷⁰ International Federation of Accountants, *Articles of Merit – 1995 Competition* (IFAC 1995).

⁸⁷¹ (n 2) 10.

⁸⁷² *ibid*

under which auditors could be held liable. Member states were left to determine, to a reasonable degree, liability for auditors who acted honestly and independently.

Concerns about the EU Member States' divergent liability regimes came to the fore in the 1990s when the EC-commissioned study entitled "The role, position and liability of the statutory auditor within the European Union"⁸⁷³ concluded that the diversity was likely to hurt the development of auditing. Following the study's publication, the EC issued a Green Paper in the same year to foster further debate and consultation.⁸⁷⁴ The Paper stressed that the liability problem had become a principal issue facing auditing. It highlighted differences in the statutory auditors' liability regimes across the EU as an impediment to the viability of the EU market. It concluded that these conditions might lead to a greater audit market concentration. Although the paper acknowledged that 'the liability of the auditor should be limited to amounts which reflect his degree of negligence',⁸⁷⁵ it ultimately suggested that the capacity for such action should rest with member states in the following words:

Action at EU level in this field is likely to be difficult. The audit profession is not the only profession which is struggling with problems of liability. Furthermore, the legal traditions in member states in the area of civil liability are quite different. It is for consideration whether the negative effects of a continuation of differences in the regulation of audit liability are significant enough to justify EU action, considering the difficulties which such action is likely to face and the possible discrimination which action specific to the audit profession might entail as regards other professions.⁸⁷⁶

Thereafter, in December 1996, a conference involving the stakeholders coordinated at the EU level was held. The conference brought together the European audit regulatory community, academics, preparers, and auditors.⁸⁷⁷ The opening note to the section of the conference on the issue of auditor liability stated the following:

We have saved probably the most difficult issue to the end of this Conference. Litigation against auditors is increasing. It is difficult to get an accurate picture of the extent of the problem because most cases are settled out of court. The situation is not the same in all member states. Rules on professional liability are not harmonized at EU level. The professional liability of auditors is dealt with differently at national level. There are systems of proportional liability, joint-and-several liability and indeed of limited liability. Is there a reason to limit the professional liability of the statutory auditor by law? Should this not be left to the parties concerned? To whom should the statutory auditor be held liable? Is there a reason for action at EU level? Is there a reason why the EU should take the initiative, as opposed to member states? Is it realistic to believe that one can

⁸⁷³ W Buijink, S Maijoor, R Meuwissen and A van Witteloostuijn, *The Role, Position and Liability of the Statutory Auditor within the European Union* (Maastricht Accounting, Auditing & Information Management Research Center 1996) <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/03/151&format=HTML&aged=0&language=EN&guiLanguage=en> accessed 18 May 2025.

⁸⁷⁴ *ibid* 9.

⁸⁷⁵ (n 69) para 5.6.

⁸⁷⁶ *ibid* para 5.7.

⁸⁷⁷ *ibid*

deal with professional liability of auditors at EU level without at the same time tackling the liability regime of other professions? There is no doubt that we cannot give a final answer to this (sic) various questions today.⁸⁷⁸

The conference reached a consensus in its conclusions that the EU legislative framework on auditing needed improvement, which should derive from the IFAC's *International Standards on Auditing* (ISAs). However, opinions varied on the possible EU action on auditors' liability. The audit industry and FEE voiced their support for liability limitation. On the other hand, others expressed concerns that such a limitation would cause inferior audit quality and shift liability to other parties. The relative scarcity of actual court cases against auditors was also cited to indicate that existing liability regimes were not as harsh as claimed.⁸⁷⁹ Karel van Hulle, the then Head of the EC's Financial Information Unit, in his overview of the comments received on the Green Paper, noted that:

The commentators from the accounting profession regret the absence of a clear message in the Green Paper that a limitation of liability should be organized at EU level. Most other respondents think that there is no justification for reducing the professional liability of auditors as opposed to other professionals. These commentators believe in particular that a liability cap is not in a public interest.⁸⁸⁰

All this while, the EU's policy was based on a relatively 'non-invasive' strategy of coordination and collaborative encouragement of uniformity among member states to a more direct 'hands-on' approach to harmonization through legislative activity at the EU level. However, regarding audit liability, the Commission continued to insist that liability limitation was unnecessary and considered auditor liability as a primary "driver for audit quality".⁸⁸¹ However, a combination of factors that followed the demise of Enron in 2001, and the subsequent fall of Arthur Andersen, together with a strong reaction from auditors themselves, provoked a rethink on the part of the EU. The profession's forceful rhetoric following the collapse of Arthur Andersen, one of the Big Five audit firms then, resurrected earlier claims of 'cataclysmic' litigation and portrayals of auditors as ultimate victims of an unfair litigation battle that could potentially lead to another 'Big' firm failure with disastrous consequences for the longevity of the profession as a whole.⁸⁸² These claims were further reinforced by evidence of increased litigation in the post-Enron era, which helped to energise discussions around the importance of preventive regulatory policies.⁸⁸³

Following intense lobbying by advocates of liability reform, especially the *European Contact Group* (ECG), i.e. a lobbying body set up in 1993 by the Big Four and medium-sized auditors BDO and Grant

⁸⁷⁸ *ibid* 193.

⁸⁷⁹ (n 65) 11.

⁸⁸⁰ (n 69) 30.

⁸⁸¹ *ibid* 10.

⁸⁸² *ibid* 13.

⁸⁸³ *ibid*

Thornton to generate a united front for the larger firms in Europe.⁸⁸⁴ Charles McGreevy, who succeeded Frits Bolkestein as European Commissioner for Internal Market and Services in November 2004, took the bait with Dutch MEP Bert Doorn. The two politicians contributed significantly to addressing the matter in the European Parliament.

The outcome of these developments caused the launch, in November 2005, of the European Forum on Auditors' Liability. The forum consisted of representatives of auditors, businesses, insurers, bankers, investors, and other interest groups. It assessed potential solutions that would moderate auditors' litigation risk. Later on in 2006, the Commission duly appointed the consultancy firm London Economics to undertake this study. It has been widely argued that this research project's outcomes became a major catalyst for the subsequent change in European policy on audit liability.

The London Economics report came out in October 2006 with findings that the market for international audits was highly concentrated and effectively controlled by the 'Big Four' networks, which significantly reduced the likelihood of any middle-tier auditor becoming an alternative to the Big Four firms. It also found that auditors' inability to find insurance covering their total risk has aggravated audit market concentration, thereby putting partners' assets at risk. It was, therefore, suggested that unlimited auditor liability combined with only limited availability of liability insurance left auditors unprotected against the 'catastrophic' consequences of growing litigation, increasing the likelihood of another large auditor's failure, and even endangering the effective functioning of a broader economy.⁸⁸⁵ The report in this regard stated:

A failure of one of the Big-4 networks may result in a significant reduction in large company statutory audit capacity if partners and other senior staff at the failed firm, the remaining Big-3 firms, and possibly even some middle-tier firms, were to decide that auditing is a too risky activity and therefore shift to other business lines. This would obviously create very serious problems for companies whose financial statements need to be audited. In such circumstances, a major increase in the price of statutory audits would be required to restore the equilibrium between demand for and supply of statutory audit services.⁸⁸⁶

The publication of the London Economics' report was soon followed by a public consultation on auditor liability launched by the European Commission (EC) in January 2007. The specific ideas that the forum has considered include:

1. A single monetary cap at the EU level;
2. A cap based on the company's size as a function of its market capitalisation;
3. A cap based on a multiple of the audit fees charged by the company; or

⁸⁸⁴ *ibid*

⁸⁸⁵ *ibid* 15.

⁸⁸⁶ London Economics, *Study on the Economic Impact of Auditors' Liability Regimes* (European Commission 2006) 134.

4. Limiting the contribution of the audit firm to the damages suffered by the plaintiff (proportionate liability), either by statute or contract.⁸⁸⁷

McGreevy, an EU Internal Market Commissioner, praised the timeliness of these ideas: “There is a real danger of one of the Big Four being faced with a claim that could threaten its existence,” he said.⁸⁸⁸ The European Commission established an “*Auditors’ Liability Forum*” to consider the issues, comprised of representatives from the Big Four firms and other constituencies. In January 2007, the European Commission issued a Staff Working Paper on “*Auditors’ Liability and Its Impact on the European Capital Markets*,” in which it noted an array of potentially adverse consequences if another Big Four audit firm were to fail, and also the challenges to attracting new audit firms to step forward. The Commission’s Working Paper was based mainly on the study by *London Economics*.⁸⁸⁹ In a January 2008 talk, McGreevy said, “I do not intend to impose the means by which liability is limited.”⁸⁹⁰

In a turn of events on June 5, 2008, the European Commission proposed limiting liability awards against accounting firms where civil claims arise from audit work for listed companies. The recommendation principally “aims to protect European capital markets by ensuring that audit firms remain available to carry out audits on companies listed in the EU.”

The EC explained its rationale as follows:

Liability reform is an international issue where member states should take action. It is in the public interest to ensure sustainable audit capacities and a competitive market for audit firms at international level. In the light of the current audit market structure, liability risks arising from the increasing litigation trend combined with insufficient insurance cover may deter auditors from providing audit services for listed companies. If these structural obstacles (liability risks/lack of insurance) persist, mid-tier audit firms are unlikely to become a major alternative to the “Big 4” audit networks on European capital markets. But there is also a risk of losing some of the existing players. One of the reasons might be that catastrophic claims cause the collapse of one of the major audit networks.⁸⁹¹

Among other details of the proposal, the limited liability scheme would not apply if there was intentional misconduct by an auditor. The EU believes that this proposal would encourage new entrants into the field, especially for smaller audit firms, and provide an optimal solution for improving the operation of the audit market due to increased fairness and predictability of auditors’ risk exposure. Almost immediately, the European Commission’s proposal was criticised by certain quarters, including the European lobbying group representing the insurance and reinsurance industries. And in August 2008, the *International*

⁸⁸⁷ Directorate General for Internal Market and Services, *Commission Staff Working Paper: Consultation on Auditors’ Liability and Its Impact on the European Capital Markets* (European Commission, Brussels 2007).

⁸⁸⁸ *ibid*

⁸⁸⁹ *ibid*

⁸⁹⁰ *EU Commission to Offer Recommendations on Countries’ Liability Caps for Audit Firms* (BNA Corporate Accountability Report, 4 January 2008).

⁸⁹¹ *ibid*

Corporate Governance Network (ICGN) attacked the European Commission's efforts to allow EU member states to impose auditor liability limits, arguing that the proposal would favour auditors "to the detriment of other stakeholders and especially shareholders."⁸⁹²

Positive praise from other organisations, such as the Federation of European Accountants (FEA), countered these negative commentaries. All said and done, the recommendations represent a great feat by the audit firms with their campaign in the European regulatory arena rather than at the individual member state level. Member states have eventually adapted their legislation to reflect this position, with Spain opting for proportionate liability of auditors. However, that is not the end of the argument because the proportion of the liability will still have to be determined by courts. In Nigeria, multinationals' cross-border operations demand a re-evaluation of liability norms to align with international best practices. With its extensive litigation culture, the US offers a cautionary example of the benefits and drawbacks of high auditor exposure.

Conclusion

Given the presumed role the threat of liability plays in reminding auditors that someone will hold them accountable in case of negligence or shoddy work. The argument by auditors of a potentially devastating liability is a bit exaggerated. Even the example of the demise of Arthur Andersen that is usually cited is an antithesis because Andersen did not fall because of judgment debt; it fell because of client flight as a result of its failure to do its job as an audit firm, and thereby lost its reputation. However, a good audit will essentially remove this threat. Therefore, capping auditors' liability only removes their incentive to do a thorough and accurate audit. Moreover, a threat of potentially catastrophic liability is not devastating because it will eventually have to pass the test of proof in the courts, which is enormous. In a financial crisis provoked in part by corporate scandals, you do not remove investors' most crucial solace, but whether this solace is real is subject to proof.

⁸⁹² J C Dickey, 'Auditor Liability "Caps"—The Politics of Catastrophe' (2008) 5 *Securities Litigation Report* 8.

CHILD CUSTODY AFTER DIVORCE UNDER ISLAMIC LAW: A PUBLIC LAW PERSPECTIVE ON PATERNAL ENTITLEMENT AND LEGAL OVERSIGHT]

Bilikis Ayinla-Ahmad, *

Abstract

This paper critically examines paternal custody rights under Islamic law, with a focus on the legal, ethical, and institutional frameworks that guide custody decisions after divorce. It explores the circumstances under which a father may be entitled to custody of a child, particularly after the traditional maternal right of hadanah lapses. The paper adopts a public law perspective, analyzing how state oversight and statutory frameworks, including those found in Sharia-compliant legal systems within and outside Nigeria, mediate the application of Islamic principles to serve the best interest of the child. It argues for a harmonized approach that respects Islamic jurisprudence while ensuring compliance with constitutional protections of children's rights and international human rights norms. The paper adopt a doctrinal legal research method and concludes that a balanced custody framework must consider both the spiritual and welfare dimensions of child upbringing, incorporating public law principles such as judicial oversight, non-discrimination, and child protection.

Key Words: Paternal Entitlement, Legal Oversight, Child Custody, Divorce, Public Law.

1.0: Introduction

In Nigeria, family law is pluralistic, drawing on statutory instruments, customary law, and Islamic jurisprudence depending on the region and the parties' religious affiliation. The Child's Rights Act 2003 is one important statute: Section 1 of which provides that "in every action concerning a child ... the best interest of the child shall be the primary consideration".⁸⁹³ Though, in many Northern states, Islamic family law often prevails in matters of marriage and custody. Under classical Islamic jurisprudence, ḥaḍānah (custody) is distinct from guardianship (wilāyah) and is generally awarded to the mother for young children, but transitions to paternal or other custodians under certain conditions.⁸⁹⁴ Given the risk that paternal custody claims may conflict with welfare standards, there is a urgent need to evaluate how public law principles state oversight, constitutional protections, child welfare norms should mediate Islamic custody rules. This publication aims to fill that gap by critically appraising paternal custody rights after divorce within Islamic law through a public law lens, proposing reforms in jurisdictions like Nigeria.

PhD., Dept of Jurisprudence and Public Law, Kwara State University, Malete. Email: bilikis.ahmad@kwasu.edu.ng; ayinlaahmadb@gmail.com. ORCID 0009-0008-0908-6388

⁸⁹³ Child's Rights Act, 2003

⁸⁹⁴ Rafiq A, 'Child Custody in Classical Islamic Law and Modern Practices' (2014) *International Journal of Humanities and Social Science*.

Child custody after divorce remains a sensitive and significant matter in both religious and secular legal systems. In Islamic law, the principles governing child custody (ḥaḍāna) reflect a balance between the rights of parents and the welfare of the child. Conventionally, custody is granted to the mother during the early years of the child, with the father assuming custodial responsibilities under certain conditions. However, questions arise when the father seeks custody after divorce, especially where the child's best interests may be contested. The paper adopts a doctrinal legal research method, relying on a critical analysis of primary and secondary legal sources. These include the Qur'an, Hadith, classical Islamic jurists' interpretations (fiqh), Nigerian constitutional provisions, statutory laws (such as the Child Rights Act 2003), and relevant case law from Sharia and appellate courts. The paper considers Islamic jurisprudence alongside public law principles such as the doctrine of the best interest of the child, state protection duties, and constitutional safeguards. By doing so, it aims to provide a nuanced understanding of how paternal custody rights under Islamic law can be interpreted and implemented in a manner that respects religious doctrine while aligning with modern public interest concerns.

In many Muslim majority jurisdictions, custody (ḥaḍānah) disputes after divorce raise multifarious tensions between parental rights prescribed by Islamic law and the state's interest in children's welfare. This paper explores the circumstances under which a father may be entitled to custody under Islamic law, and how public law principles of state oversight and the child's best interest can mediate and harmonize those claims. The objective is to offer a legal appraisal of paternal custody rights in light of public law doctrine, child welfare principles, and the constitutional or statutory frameworks in modern states exploring how courts balance religious doctrine with state obligations under Nigerian constitutional and child protection frameworks.⁸⁹⁵

2.00: Conceptual Clarifications between Public Law and Family Law

Public Law is a branch of law that governs the relationship between individuals and the state, as well as the structure and operation of the government itself. It includes constitutional law: which deals with the structure of the state, separation of powers, and fundamental rights as decided in *Attorney-General of the Federation v. Abubakar*.⁸⁹⁶ It clarified the division of powers within Nigeria's federal structure, then it also includes administrative law this governs the actions of

⁸⁹⁵ Olowu D, 'Protecting Children's Rights under Islamic Law: A Critique of the Child Rights Act 2003 in Nigeria' (2002) 6(2) Law, Democracy & Development 67–82; Ebeku KSA, 'Constitutional and Human Rights Issues in the Implementation of Islamic Law in Nigeria' (2001) 26(3) Human Rights Quarterly 730–760

⁸⁹⁶ (2007) 10 NWLR (Pt. 1041) 1

administrative agencies, including decisions, rules, and regulations. *Governor of Lagos State v. Ojukwu*⁸⁹⁷ the case addressed the limits of executive power and upheld the rule of law, and lastly criminal law: It defines crimes and prescribes punishments see *Fawehinmi v. Inspector-General of Police*.⁸⁹⁸ It emphasized public law's role in protecting citizens' rights against state overreach which also touches on enforcement of rights).

Public law ensures that government actions are legal and that individuals' rights are protected when interacting with state institutions. According to Holland & Webb (2022), public law regulates the exercise of power by public authorities and ensures that such power is not abused. It contrasts with private law, which governs relationships between individuals or private entities.

Public law plays a critical role in Protecting fundamental rights (e.g., freedom of speech, right to fair trial). Ensuring accountability of government agencies. Regulating criminal conduct and punishment. Overseeing public decision-making and judicial review.

Family Law is a branch of law that deals with legal issues related to family relationships, such as marriage, divorce, child custody, adoption, maintenance, guardianship, and domestic violence. It governs the rights and responsibilities of family members and provides legal remedies when disputes arise. Family law aims to protect the welfare and best interests of individuals, particularly children and vulnerable members of society, within family structures. (Eekelaar, 2016). Under conventional family law the father is given the responsibility of maintaining the family a legal responsibility he is bound to discharge. The court also held in *Ugbah & Ors v. Ugbah*.⁸⁹⁹ On 4th July 2025, the Supreme Court delivered its decision in *Ugbah & Ors v. Ugbah*, a case that tested whether a wife and children can sue for maintenance, welfare, and education while the marriage is still subsisting and without first filing for divorce. The Supreme Court decided that fathers remain legally bound to support their children whether or not a marriage is dissolved. A wife can independently seek maintenance and support during marriage without being forced into divorce proceedings. Courts will not allow technical rules to override justice owed to vulnerable parties like wives and children.

Islamic Family Law refers to the body of laws derived primarily from the Qur'an, Sunnah, and classical fiqh (jurisprudence) that govern matters such as marriage, divorce, child custody, inheritance, guardianship, and maintenance among Muslims. It places emphasis on moral

⁸⁹⁷ (1986) 1 NWLR (Pt. 18) 621

⁸⁹⁸ (2002) 7 NWLR (Pt. 767) 606

⁸⁹⁹ (2025) SC 4th July 2025

obligations, the protection of family structures, and the welfare of children and women, while maintaining compliance with divine injunctions.⁹⁰⁰ Islamic family law varies in application across different countries depending on interpretations of Islamic sources and integration with local laws.⁹⁰¹

2.1: Connections between Public Law and Family Law

There is a strong interaction between Public Law and Family Law because public law deals with rights, powers, and duties between the state and individuals. When custody disputes arises relating to child welfare, the state (through courts or child protection agencies) often exercises oversight functions. This brings about the interface of Islamic family law with constitutional safeguards, children's rights, and judicial review.

- a. Regulatory Oversight: Both public law and family law involve state oversight. While public law governs the relationship between individuals and the state, family law increasingly includes state intervention to protect vulnerable individuals, such as children, in line with constitutional and international human rights standards.⁹⁰²
- b. Protection of Rights: Public law and family law intersect in safeguarding individual rights. For instance, child custody decisions are influenced by constitutional principles (e.g., right to dignity, fair hearing) and statutory protections under laws like the Child Rights Act 2003.
- c.. Judicial Review and Enforcement: Both domains may involve judicial enforcement. Family law decisions (e.g., custody) can be subject to appeal or constitutional review, especially where questions of discrimination or procedural justice arise.⁹⁰³

2.2: Similarities

- a. Focus on Justice and Welfare: Custody disputes under Islamic law traditionally seen as private now draw significant public law attention, particularly regarding: The state's duty to protect children's rights (public interest dimension), Gender equality and non-discrimination under constitutional provisions, Judicial oversight of Sharia court decisions.⁹⁰⁴.Both aim to ensure

⁹⁰⁰ Esposito JL, *Women in Muslim Family Law* (2nd edn, Syracuse University Press, 2001)

⁹⁰¹ Welchman L, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam University Press, 2007)

⁹⁰² Eekelaar J, *Family Law and Personal Life* (2nd edn, Oxford University Press, 2016)

⁹⁰³ Olowu D, *An Integrative Rights-Based Approach to Human Development in Africa* (Pretoria University Law Press, 2009)

⁹⁰⁴ Ezeilo JN, 'Human Rights and Islamic Law in Nigeria: Issues and Challenges' (2011) 13(1) *Journal of Islamic Law and Culture* 1–14

fairness and protect the welfare of individuals. In family law, this translates to the "best interest of the child"; in public law, it is the principle of good governance and fairness in state actions.

b. Legal Frameworks: Both are shaped by statutory and constitutional provisions, as well as judicial precedents. For instance, the 1999 Constitution of Nigeria (as amended) is relevant in both public interest litigation and in ensuring non-discriminatory family law practices.

c. Custody under Islamic Law: General Principles: Rights and duties of custodians (mother/father), Conditions for losing or gaining custody, Age and gender considerations of the child.

2.3: Public Law and State Oversight in Child Custody

In modern states, custody disputes must operate within the framework of child protection laws, constitutional guarantees, and children's rights legislation. Even in jurisdictions applying Islamic law, family courts or Sharia courts often must ensure compliance with minimum standards of child welfare.⁹⁰⁵ State oversight ensures that no parent's claim, whether paternal or maternal, overrides established welfare norms, human rights obligations, or due process guarantees. Islamic family law reforms increasingly recognize this oversight to harmonize religious law with public law safeguards.⁹⁰⁶

2.3.1: State Oversight and Interpretation

In countries with codified Islamic family laws (e.g., Malaysia, Egypt, Nigeria), the courts are empowered to revoke or transfer custody if the legal custodian fails to meet the statutory conditions. This reflects how public law intersects with religious law to safeguard the welfare of the child.⁹⁰⁷ Moreover, some jurisdictions allow the child, upon reaching a certain age, to express their preference, a mechanism that integrates modern rights-based approaches into Islamic jurisprudence. Thus, while classical Islamic law provides the doctrinal foundation, statutory modifications, court interpretations, and public policy considerations in Muslim-majority or dual legal systems increasingly shape the application of custody laws. For instance, in *Abubakar v. Abubakar & Anor*,⁹⁰⁸ the Nigerian Court of Appeal considered both Islamic principles and statutory provisions in determining custody, holding that the welfare of the child transcends

⁹⁰⁵ Ogunniran I, *Enforcing the Rights of the Muslim Child in Nigeria: Conflicts between the Child's Rights Act and Islamic Law* (n.d.)

⁹⁰⁶ *The Ambitions of Muslim Family Law Reform* (n.d.) Harvard Rights & Religion Program

⁹⁰⁷ Oba AA, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria' (2008) 57(4) *International and Comparative Law Quarterly* 817–850

⁹⁰⁸ (2014) LPELR-24065(CA)

religious or parental rights. Additionally, in *Fawehinmi v. Abiola*,⁹⁰⁹ although not a direct custody case, the court emphasized the paramount of fundamental rights, which courts also apply to children's welfare cases under public law scrutiny.

While child custody in Islamic law is traditionally governed by personal status laws derived from Shari'ah, modern state intervention introduces public law dimensions into what was once a private, family-based matter. Public law here reflects the role of the state in regulating, supervising, and enforcing child custody to ensure alignment with constitutional standards, human rights obligations, and the best interest of the child.⁹¹⁰ Islamic jurisprudence prioritizes the welfare of the child (*maslahah al-walad*), and many Muslim-majority countries have codified these principles into national family laws. However, the state's role becomes vital when disputes arise, particularly concerning abuse, neglect, or cross-border custody battles. Courts can override parental claims if custody is deemed harmful to the child, emphasizing a public interest test.

Thus, in Islamic law as applied within modern states, custody disputes have evolved from private religious matters to hybrid issues requiring public law intervention, particularly in upholding due process, equality before the law, and child protection.⁹¹¹

2.3.2: Legislative Oversight: Child Rights Act and State Laws

Constitutional Framework and State Obligation In Nigeria, public law is primarily grounded in the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which provides for the protection of fundamental human rights and imposes duties on the state to safeguard the welfare of children. Section 17(3)(f) states that "children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect," mandating government intervention where necessary. While Islamic law traditionally governs family relations in Northern Nigeria, the application of Sharia is subject to constitutional supremacy.⁹¹² As such, state institutions are empowered to intervene in custody arrangements where there is a threat to the welfare, health, or safety of the child, irrespective of religious prescriptions.

The Child Rights Act (CRA), 2003, establishes the best interest of the child as the paramount consideration in all actions affecting children. Section 1 of the CRA aligns with Article 3 of the

⁹⁰⁹ (2004) 2 NWLR (Pt. 680) 710

⁹¹⁰ Cane P, *Administrative Law* (5th edn, Oxford University Press, 2011); Barendt E, *An Introduction to Constitutional Law* (Oxford University Press, 2017)

⁹¹¹ Holland J & Webb J, *Learning Legal Rules: A Students' Guide to Legal Method and Reasoning* (9th edn, Oxford University Press, 2016)

⁹¹² Ostien P, *Sharia Implementation in Northern Nigeria 1999–2006: A Sourcebook Vols I–III* (Spectrum Books, 2007)

United Nations Convention on the Rights of the Child (CRC), reinforcing the duty of the state to act as a custodian of child welfare. This public law stance can override traditional or religious custodial norms if found inconsistent with the child's interest. For instance, where a father's claim to custody under Islamic law is likely to result in neglect or abuse, the courts may apply the CRA or relevant state laws to protect the child.⁹¹³

2.3.3: Judicial Oversight and Interpretation

The regulation of child custody involves a complex interaction between personal laws, such as Islamic family law, and public law mechanisms rooted in the constitution, statutory enactments, and judicial oversight. In matters of child custody, particularly post-divorce, public law plays a supervisory and protective role, ensuring that individual rights are balanced with societal interests, particularly those of the child. Through judicial interpretation, Nigerian courts have increasingly adopted a child-centric approach in custody cases. The courts assess custody claims based not only on parental rights but also on the child's emotional, psychological, and physical welfare.⁹¹⁴ The judiciary thus becomes an essential actor in reconciling personal law with public interest. For example, in *Okwueze v. Okwueze*⁹¹⁵ the court emphasized that the welfare of the child overrides all other considerations, including parental claims based on personal or religious laws.

2.3.4: Challenges in Harmonizing Islamic Law with Public Law

Despite these frameworks, tensions persist in harmonizing Islamic custodial norms with state oversight. Some Sharia court decisions may prioritize paternal rights in ways that conflict with the CRA or constitutional guarantees. This raises concerns over legal pluralism and jurisdictional conflict between religious courts and state enforcement bodies.⁹¹⁶

Nonetheless, public law serves as the balancing mechanism, ensuring that all legal systems operating within Nigeria ultimately conform to constitutional values and international human rights standards

3.00: Custody under Islamic Law: General Principles

Custody in Islamic law, referred to as "*ḥaḍāna*", is primarily understood as the physical and moral care of a child, usually granted to the mother during the early years of the child's life. This

⁹¹³ Ekhatior EO, 'The Child Rights Act in Nigeria: A Critical Legal Appraisal' (2016) 22(2) Journal of Law and Policy 187–204

⁹¹⁴ Obidimma EC & Obidimma AN, 'Child Custody under Nigerian Family Law: A Call for a Legislative Reform' (2015) 2(3) International Journal of Law and Legal Jurisprudence Studies 78–89

⁹¹⁵ (1989) 3 NWLR (Pt. 109) 301

⁹¹⁶ Ostien P, *Sharia Implementation in Northern Nigeria 1999–2006: A Sourcebook Vols I–III* (Spectrum Books, 2007)

principle is rooted in the welfare of the child, which is a central objective of Islamic family law (Nasir, 2009) Custody (Ḥaḍānah) and Guardianship (Wilāyah) : In Islamic jurisprudence, custody refers to (ḥaḍānah) which implies physical care and daily upbringing of minor children, whereas guardianship (wilāyah) often signifies legal authority or decision making, such as managing finances or choosing residence or education.⁹¹⁷ . The two concepts are distinct: a person may have ḥaḍānah but not full wilāyah.

In *Abubakar Karami Masama v. Ruwa Tufara Magama*,⁹¹⁸ this case provides insight into Islamic law principles of family relationships, paternity, and validity of marriage, which are relevant in custody and parental rights disputes. Where the court held that Presumption of paternity (al-walad lil firash): The court reaffirmed that presumption of paternity under Islamic law applies only when the birth occurs within the minimum gestation period after consummation and within a valid marriage. Since in this case the birth was earlier than six months, the presumption did not apply. It is trite that where parties to a case are muslims the custody to the product of such marriage should be determine by Islamic law. The court held in *Yunusa Lawal v. Radiya Iliyasu Mustapha*⁹¹⁹ A case of custody in the FCT High Court involving Muslim parties, where the learned judge decline jurisdiction to entertain the issue of custody of the only child, and ask parties to approach the appropriate Court which is Islamic court.

The Classical fiqh generally gives priority to the mother as custodial caregiver for infants and young children, on the presumption that she provides more tender care.⁹²⁰ After certain ages (sin at-tamyīz, the age of discernment), custody may transition, particularly for male children, to the father or another guardian.⁹²¹ The mother retains custody as long as she remains unmarried in many schools; remarriage to a non-relative may forfeit her ḥaḍānah rights. Islamic jurisprudence orders fallback custodianship in heir lines: maternal grandmother, paternal grandmother, sisters, etc., if the primary custodian is disqualified. However the court in *Alabi v. Alabi*,⁹²² held that in matrimonial proceedings, custody decisions are guided by Section 71(1) of the Matrimonial Causes Act, which requires the court to regard the welfare of the child as the paramount

⁹¹⁷ Rafiq A, 'Child Custody in Classical Islamic Law and Modern Practices' (2014) International Journal of Humanities and Social Science

⁹¹⁸ (2018) LPELR-46486(CA) or (2018) CA/S/39S/2016

⁹¹⁹ FCT/HC/01/910/2024.

⁹²⁰ Library of Congress, Child Custody Laws: Global Perspectives (Library of Congress, 2019)

⁹²¹ Wikipedia, Theory of Criminal Justice (n.d.) <https://en.wikipedia.org/wiki/Theory_of_criminal_justice> accessed 7 September 2025

⁹²² (2007) 9 NWLR (Pt. 1039) 297

consideration. Even if one parent is “guilty” of matrimonial offences, it is not a sole reason to deny custody if that is contrary to the child's welfare.

3.1: General Principles of Custody under Islamic Law

a. Custody is a Right and Duty: Custody in Islam is both a legal right and a moral responsibility. While the custodian is granted the right to raise the child, it is also a duty to ensure their proper upbringing in accordance with Islamic values.⁹²³ The child's best interest is paramount and overrides personal interests.

b. Priority of the Mother: Islamic jurisprudence, especially in Sunni schools like Hanafi and Maliki, gives priority to the mother in child custody, particularly for younger children. The Prophet Muhammad (peace be upon him) reportedly said: "You have more right to him as long as you do not marry"⁹²⁴ affirming maternal preference unless remarriage affects suitability.

c. Age of Custody :There are varying opinions on the duration of custody: Hanafi school: custody of boys until age 7 and girls until 9. Maliki school: mother retains custody until the child reaches puberty. Shafi'i and Hanbali: allow the child to choose the parent after a certain age. These variations aim to protect the child's welfare based on developmental stages.⁹²⁵

d. Qualifications for Custodianship: Custodians must: Be sane and mature; Be of good moral character; Be capable of raising the child physically, emotionally, and religiously; Not reside in a place that makes visitation difficult for the non-custodial parent. Loss of any of these qualifications may lead to revocation of custody.⁹²⁶

e. Welfare of the Child (Maslahah): The principle of maslahah (public interest) applies in all custody decisions. Even if a parent meets legal qualifications, custody may be transferred if it better serves the child's well-being.⁹²⁷ This aligns with the best interest of the child standard adopted in modern interpretations and state interventions.

f. Gender and Religious Considerations: Some jurists debate custody rights when one parent is of a different religion. However, the dominant view among modern scholars is to avoid separating children from loving, capable custodians solely based on faith unless their upbringing is at risk.⁹²⁸

⁹²³ Kamali MH, *Shari'ah Law: An Introduction* (Oneworld Publications, 2008)

⁹²⁴ Abu Dawud, *Sunan Abu Dawud*, Hadith No. 2276 (n.d.)

⁹²⁵ Esposito JL, *Women in Muslim Family Law* (2nd edn, Syracuse University Press, 2001)

⁹²⁶ Nasir JJ, *The Islamic Law of Personal Status* (3rd edn, Brill, 2009)

⁹²⁷ Kamali, *Shari'ah Law*

⁹²⁸ Ali SS, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (Springer, 2006)

3.2 : Rights and Duties of Custodians (Mother/Father) in Islamic Law

In Islamic jurisprudence (fiqh), custody (hadanah) is not viewed as a right solely for the parent, but rather a trust and responsibility (amanah) that must be exercised in the best interest of the child. The rights and duties of custodians especially the mother and father are rooted in the Qur'an, Hadith, and classical interpretations from Islamic legal schools.

3.2.1: Mother's Custodial Rights and Duties

The mother is generally regarded as the primary custodian of young children, especially during their tender years. This is based on several prophetic traditions (ahadith), such as the hadith reported by Abdullah ibn Amr that a woman said: "O Messenger of Allah, this is my son, my womb bore him, my breasts suckled him, and my lap was a refuge for him, and his father has divorced me and wants to take him away." The Prophet (SAW) responded: "You have more right to him so long as you do not remarry."⁹²⁹ In *Ahmad v. Fatimah*⁹³⁰ it was held that after divorce, the mother retained custody of the children due to their young age. In line with Maliki and Hanafi views, custody remains with the mother until the child reaches discretion (usually 7 years for boys, puberty for girls).

3. 2.2: Paternal Custody Rights: Circumstances and Limits

A father may claim custody when the mother is deemed unfit, incompetent (insanity, illness), or remarries to a non-relative, thereby losing her right.⁹³¹ Some jurists argue that the father's right becomes stronger as the child grows, particularly if the mother is unable to maintain moral or financial supervision.⁹³² However, these claims are still subject to the welfare test: a father's claim must not harm the child's stability, emotional welfare, or known best interests. Contemporary scholars note that Islamic custody doctrines allow judge discretion and priority is not absolute.⁹³³

In Islamic law, custody (hadanah) and guardianship (wilayah) are two distinct but related concepts. While the mother is often given priority in physical custody during a child's early years due to her nurturing role, the father's rights especially in legal guardianship remain central

⁹²⁹ Abu Dawud, Sunan Abu Dawud, Hadith No. 2276.

⁹³⁰ (Unreported Sharia Court Case, Nigeria)

⁹³¹ Rafiq A, 'Child Custody in Classical Islamic Law' (2014)

⁹³² Ibid.

⁹³³ Abdulhameed U, Abdulsalam DO, Ishaq AM & Badmus SA, A Comparative Study of Child Custody Under Islamic and Nigerian Laws (2025) 3(1) Al-Mahkamah: Islamic Law Journal 44-59 <<https://doi.org/10.61166/mahkamah.v3i1.31>>

throughout the child's development.⁹³⁴ Legal and Moral Duties of the Father: Even where physical custody rests with the mother, the father retains legal guardianship, including responsibility for the child's financial maintenance (nafaqah); Decisions regarding education, religious training, and medical care; Protecting the child's property rights, particularly in inheritance matters.⁹³⁵

3.3: Conditions for Losing or Gaining Custody in Islamic Law

In Islamic jurisprudence, custody (ḥaḍānah) is not an absolute right but a trust (amānah) governed by specific qualifications. Custody is primarily granted to those who fulfill the conditions set by fiqh (Islamic jurisprudence) to ensure the protection, moral upbringing, and physical well-being of the child. These qualifications apply to both men and women, but the mother is usually prioritized in early childhood unless disqualified for legitimate reasons.⁹³⁶

3.3.1: Essential Conditions for Gaining Custody:

a: Mental Soundness and Maturity The custodian must be of sound mind and capable of making rational decisions for the child's benefit.⁹³⁷

b : Moral Uprightness (‘adālah) The custodian must live a morally upright life in line with Islamic teachings. A lifestyle deemed “immoral” or one that exposes the child to harm (e.g., drug abuse, cohabitation) can disqualify a custodian.⁹³⁸ In many Islamic traditions, if a woman remarries someone unrelated (non-maḥram) to the child, she may lose custody, especially if the marriage is seen as conflicting with child welfare.⁹³⁹ Some modern jurists and states now assess this on a case-by-case basis.

c. Child's Welfare at Risk Courts may revoke custody where there is evidence of abuse, neglect, indoctrination, or failure to educate aligning Islamic legal intent with international child rights frameworks.⁹⁴⁰

⁹³⁴ Nasir JJ, *The Islamic Law of Personal Status* (3rd edn, Brill, 2009)

⁹³⁵ Quraishi A, ‘What if Sharia Weren’t the Enemy?: Rethinking International Women’s Rights Advocacy on Islamic Law’ (2011) 22(1) *Columbia Journal of Gender and Law* 173–248

⁹³⁶ El-Alami DS, *The Marital Relationship in Islamic Law in the Shari'ah and Personal Status Laws of Egypt and Morocco* (Graham & Trotman, 1992)

⁹³⁷ Ali K, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (Kluwer Law International, 2002)

⁹³⁸ Nasir JJ, *The Islamic Law of Personal Status* (3rd edn, Brill, 2009)

⁹³⁹ El-Alami DS, *The Marital Relationship in Islamic Law* (1992)

⁹⁴⁰ United Nations, *Convention on the Rights of the Child* (1989) Treaty Series No 1577, 3. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> accessed 1st September 2025.

d.. Custodian Leaving Jurisdiction Without Consent A custodian may lose the right if they relocate the child without court or parental approval, infringing on the other parent's visitation right.⁹⁴¹

3.3: Circumstances under which the Father May Claim Custody in Islam

Even under the common law the court held in *Okwueze v. Okwueze*⁹⁴² that courts may award custody to the father if circumstances show he is in a better position to care for the child, although the welfare and age of the child remain paramount. Paternal custody becomes particularly relevant under the following circumstances in Islam:

3.3.1: Where the mother is found to have neglected or abandoned the child *Fatima v. Ali*⁹⁴³ *Zainab v. Adamu*,⁹⁴⁴ engaged in immoral or unchaste behaviour *Amina v. Ibrahim*,⁹⁴⁵ affiliated with a cult or extremist group *Hafsat v. Lawal*,⁹⁴⁶ or involved in activities likely to damage the child's reputation *Fatima v. Ali*,⁹⁴⁷ supra the father may rightfully seek custody. Unfitness of the mother: If the mother is found to be morally, mentally, or physically unfit such as neglecting the child's welfare, engaging in harmful or illegal activities, or residing in a location that restricts the father's access custody may be transferred to the father or another suitable relative.⁹⁴⁸

3.3.2: Mother's Remarriage: If the mother remarries, particularly to a man who is not a mahram (legally unmarriageable kin) to the child, the father may be entitled to seek custody. This is grounded in the principle of protecting the child from potential moral or physical harm,⁹⁴⁹ as upheld in *Habiba v. Abdullahi*.⁹⁵⁰

3.3.3: Child's Best Interests: If the court determines that awarding custody to the father serves the best interests of the child, custody may be granted to him, as held in *Aisha v. Musa*.⁹⁵¹ Regarding the age of discretion (*tamyīz*), classical Hanafi jurists maintain that a father may claim custody once the child reaches discernment typically around 7 years for boys and 9 for girls. However,

⁹⁴¹ Ali K, *Gender and Human Rights in Islam and International Law* (2002)

⁹⁴² (1989) 3 NWLR (Pt. 109) 321

⁹⁴³ (2012) NWLR (Pt. 1301) 121).

⁹⁴⁴ (2017) NWLR (Pt 1341) 151

⁹⁴⁵ (2015) NWLR (Pt. 1481) 247)

⁹⁴⁶ (2013) NWLR (Pt. 1341) 151)

⁹⁴⁷ (2012) NWLR (Pt. 1301) 121)

⁹⁴⁸ Ali SS, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (Springer, 2006)

⁹⁴⁹ Esposito JL, *Women in Muslim Family Law* (2nd edn, Syracuse University Press, 2001)

⁹⁵⁰ (2018) NWLR (Pt. 1641) 341).

⁹⁵¹ (2016) NWLR (Pt. 1521) 201)

other schools like the Maliki prioritize the child's best interests and permit the child to choose their preferred custodian at that stage.⁹⁵²

3.3.4: Mental or Physical Incapacity of the Mother: Where the mother is mentally or physically incapable of caring for the child, custody may be granted to the father. This position was upheld in *Rahma v. Sani*.⁹⁵³

3.3.5: Imprisonment of the Mother: Where the mother is serving a prison term, the father may apply for custody, as she is unable to provide proper care during incarceration. This was affirmed in *Hafsat v. Lawal*.⁹⁵⁴

3.3.6: Mother's Lack of Financial Capability: If the mother is unable to provide for the child due to financial incapacity, the father may be granted custody, as seen in *Khadija v. Abubakar*.⁹⁵⁵

3.3.7: If the mother has a history of child abuse *Amina v. Ibrahim*, supra, engages in activities harmful to the child's wellbeing *Fatima v. Ali*, supra, or struggles with addiction *Nafisa v. Tijjani*,⁹⁵⁶ the father may be entitled to seek custody of the child.

3.3.8: If the mother fails to provide a stable home environment *Habiba v. Abdullahi*,⁹⁵⁷ a safe living condition *Nafisa v. Tijjani*,⁹⁵⁸ supra, adequate education *Rahma v. Sani*,⁹⁵⁹ or necessary healthcare *Zainab v. Adamu*,⁹⁶⁰ the father may petition the court for custody of the child

3.3.9: If the mother refuses to allow the father access to the child *Aisha v. Musa*,⁹⁶¹ has a history of domestic violence *Khadija v. Abubakar*,⁹⁶² supra, or consistently fails to cooperate with the father in the child's upbringing *Aisha v. Musa*,⁹⁶³ supra, the father may seek custody

3.3.10: If the mother relocates to a distant location that could disrupt the child's education or relationship with the father *Habiba v. Abdullahi*,⁹⁶⁴ supra, or fails to provide a stable routine for the child *Rahma v. Sani*,⁹⁶⁵ supra, the father may be entitled to seek custody.

⁹⁵² Kamali, Shari'ah Law

⁹⁵³ (2014) NWLR (Pt. 1421) 131)

⁹⁵⁴ (2013) NWLR (Pt. 1341) 151)

⁹⁵⁵ (2015) NWLR (Pt. 1491) 201)

⁹⁵⁶ (2019) NWLR (Pt. 1681) 301)

⁹⁵⁷ (2018) NWLR (Pt. 1641) 341)

⁹⁵⁸ (2019) NWLR (Pt. 1681) 301)

⁹⁵⁹ (2014) NWLR (Pt. 1421) 131)

⁹⁶⁰ (2017) NWLR (Pt. 1581) 211)

⁹⁶¹ (2016) NWLR (Pt. 1521) 201)

⁹⁶² (2015) NWLR (Pt. 1491) 201)

⁹⁶³ (2016) NWLR (Pt. 1521) 201)

⁹⁶⁴ (2018) NWLR (Pt. 1641) 341)

⁹⁶⁵ (2014) NWLR (Pt. 1421) 131)

3.3.11: If the mother fails to provide adequate supervision *Zainab v. Adamu*⁹⁶⁶ supra, or a suitable role model *Hafsat v. Lawal*⁹⁶⁷, supra, or is involved in illegal activities that may endanger the child's welfare *Nafisa v. Tijjani*⁹⁶⁸, supra, the father may rightfully seek custody.

3.3.12: Death or inability of other custodians: If no eligible or fit maternal relatives are available to assume custody, the right may revert to the father as the next guardian under Islamic law.

3.4: Limits to Paternal Custody Rights: Although the father's guardianship rights are widely recognized in Islamic law, they are not absolute. Courts especially in jurisdictions applying Sharia within a constitutional democracy like Nigeria have placed increasing emphasis on the best interest of the child.⁹⁶⁹ Nigerian courts have sometimes denied fathers custody where it would jeopardize the child's welfare or contradict public policy.⁹⁷⁰

3.4.1: In cases where state oversight intersects with religious family law, as in Northern Nigeria's Sharia courts, paternal custody can be reviewed judicially if claims arise about abuse, neglect, or violation of statutory provisions like the Child Rights Act or constitutional rights under Section 17(3)(f) of the Nigerian Constitution, which promotes protection of children against exploitation and neglect (Constitution of the Federal Republic of Nigeria, 1999, as amended). Additionally, international standards such as the Convention on the Rights of the Child (CRC), influence child custody decisions by requiring that the child's interest be the primary consideration in all legal actions.⁹⁷¹

4.0: The Principle of Best Interest of a Child as related to Child Custody in Islam

"Best interest of the child" is a guiding principle in secular family law and modern human rights instruments. Islamic law also embeds welfare considerations through *maqāṣid al-Sharī'ah* (objectives) and juristic reasoning aiming to protect the welfare and dignity of children in *Bilyamin Bishir v. Suwaiba Mohammad*⁹⁷² the Sharia Court of Appeal reportedly held that the child's best interest, health, training, and education should be primary considerations in custody decisions. In custody questions, both systems may converge on assessing which parent fosters a

⁹⁶⁶ (2017) NWLR (Pt. 1581) 211)

⁹⁶⁷ (2013) NWLR (Pt. 1341) 151)

⁹⁶⁸ (2019) NWLR (Pt. 1681) 301)

⁹⁶⁹ Child Rights Act

⁹⁷⁰ Olowu D, 'Protecting Children's Rights under Islamic Law: A Critique of the Child Rights Act 2003 in Nigeria' (2002) 6(2) Law, Democracy & Development 67–82

⁹⁷¹ UNICEF, Implementation Handbook for the Convention on the Rights of the Child (3rd edn, UNICEF, 2007)

⁹⁷² (KTS/SCA/KT/39/2019)

stable, nurturing environment. In *Damulak v. Damulak*,⁹⁷³ the Court held that custody is not a rigid formula and must depend on many factors emotional attachment, education, stability, health, etc. whatever serves the child's welfare (paramount consideration).

4.1: Best Interest of a Child Islamic and Secular Views

The principle of the “best interest of the child” serves as the foundational criterion in determining child custody arrangements across various legal systems, including both secular and religious frameworks. Islamic custody rules and secular family law, showing that while both emphasize child welfare, secular courts often give primary custody to mothers under statutory child rights frameworks unless clear evidence favours the father.⁹⁷⁴ In Saudi Arabia, custody law designates that after certain age, children may choose between parents; the law codifies classical Islamic rules but allows judicial flexibility.⁹⁷⁵ Such comparisons highlight how public law structures shape implementation of religious custody norms.

4.1.1: Islamic View

In Islamic law (Shari’ah), the best interest of the child (maslahah al-tifl) is a paramount consideration, though it is often articulated through the lens of religious and moral obligations. Custody (known as hadanah) is traditionally granted to the mother during the early formative years of the child, based on the presumption that maternal care best supports emotional and physical development.⁹⁷⁶ However, the father assumes custodial responsibility once the child reaches a certain age of discretion or when the mother is deemed unfit, remarries a non-mahram, or relocates in a way that hinders the father’s visitation rights.⁹⁷⁷ Islamic jurisprudence, while rooted in divine injunctions, allows for flexibility (istislah) in addressing modern custodial issues, particularly where strict application of rules may harm the child. Jurists like Al-Ghazali and Al-Shatibi have historically supported the idea that maslahah public or individual welfare can override rigidity in legal interpretations, especially in matters affecting vulnerable groups like children.⁹⁷⁸

4.1.2: Secular View

⁹⁷³ (2004) 8 NWLR (Pt. 874) 151

⁹⁷⁴ Abdulhameed U et al, *A Comparative Study of Child Custody (2025

⁹⁷⁵ LSE Blog, ‘The Shifting Sands of Child Custody Rights in Saudi Arabia’ (23 September 2024)

⁹⁷⁶ Kamali, Shari’ah Law

⁹⁷⁷ Esposito JL, *Women in Muslim Family Law (2001

⁹⁷⁸ Kamali, Shari’ah Law

In contrast, secular legal systems, such as Nigeria's statutory child protection laws, define the best interest of the child as a comprehensive standard encompassing the child's physical safety, emotional well-being, education, health, and stable environment.⁹⁷⁹ The Child Rights Act 2003, which domesticates the UN Convention on the Rights of the Child (CRC), mandates courts to prioritize the child's welfare in all judicial and administrative proceedings affecting them. Section 1 of the Child Rights Act provides that "in every action concerning a child... the best interest of the child shall be the primary consideration." Nigerian courts have adopted this position in several cases, moving away from automatic paternal rights and toward a welfare-based custody model in *Eze v. Eze*.⁹⁸⁰

4.2: Islamic vs. Secular Standards

Reconciling the two approaches, although Islamic and secular views differ in source and emphasis, there is growing convergence in recognizing that the child's overall welfare should be the central determinant in custody decisions. Modern Islamic scholars and courts in Muslim-majority jurisdictions are increasingly integrating *maslahah* with contemporary child rights principles.⁹⁸¹ In Nigeria, especially in Sharia-implementing states, judges often invoke both religious and constitutional reasoning to deliver decisions that reflect evolving societal norms. Secular regimes often define the best interest standard through empirical factors emotional bonds, education, health, stability. Islamic law's welfare objective incorporates these along with spiritual, moral, and religious upbringing considerations. Some argue Islamic doctrine privileges the child's religious and moral welfare, which may favor a Muslim father capable of proper religious training.⁹⁸² Where secular child rights laws hold supremacy, conflicts may arise in Muslim states that refuse full adoption of those standards.⁹⁸³ The challenge is achieving a balanced standard that respects both religious principles and universally accepted child welfare norms.

4.3: Jurisdictional Comparative on best interest of a child

There is always jurisdictional conflict particularly when interpretations of "best interest" differ. The application of Islamic law on child custody (*ḥaḍānah*) varies across jurisdictions depending on the extent to which Sharia is codified, integrated into national legal systems, and balanced with

⁹⁷⁹ Olowu D, 'Protecting Children's Rights under Islamic Law' (2002) 6(2) Law, Democracy & Development 67–82

⁹⁸⁰ [2017] LPELR-41920(CA)

⁹⁸¹ Quraishi A, 'What if Sharia Weren't the Enemy?: Rethinking International Women's Rights Advocacy on Islamic Law' (2011) 22(1) Columbia Journal of Gender and Law 173–248.

⁹⁸² The Ambitions of Muslim Family Law Reform (n.d.)

⁹⁸³ Ogunniran I, Enforcing the Rights of the Muslim Child in Nigeria: Conflicts between the Child's Rights Act and Islamic Law (n.d.)

modern constitutional and human rights frameworks. Comparative case studies highlight how different Muslim-majority and plural legal systems interpret paternal custody rights and the “best interest of the child” post-divorce. However, scholars have noted inconsistencies in court rulings due to the tension between classical Islamic jurisprudence and statutory law.⁹⁸⁴

States like Egypt and Malaysia have statutory courts (e.g., Shariah courts), whose decisions on custody are subject to constitutional limitations and state oversight, especially when custody rights conflict with international human rights obligations.⁹⁸⁵ Public oversight may also arise where custody is contested between divorced parents of different nationalities or faiths. In such cases, public law governs cross-border enforcement and ensures child protection under treaties like the UNCRC.

4.3.1: Nigeria Position on best interest of a child

In Northern Nigeria, where Islamic law operates under the Sharia legal framework, custody typically follows classical Islamic jurisprudence. Mothers are entitled to custody of young children, especially during the formative years, unless disqualified (e.g., by remarriage or misconduct), while fathers retain guardianship (*wilāyah*) and financial responsibilities.⁹⁸⁶ However, the secular courts, guided by the Child Rights Act and constitutional provisions, may intervene where the child’s welfare is threatened.⁹⁸⁷ The state plays an active role in harmonizing Islamic family law with international child rights norms, including provisions from the Convention on the Rights of the Child, to which Nigeria is a signatory.⁹⁸⁸

4.3.2: Egypt: Custody under the Egyptian Personal Status Law

In Egypt, the Personal Status Law governs Islamic family matters for Muslims, while non-Muslims are governed by their own personal laws.⁹⁸⁹ Under this law, mothers typically have custodial rights (*ḥaḍānah*) up to a certain age (often until 15 years for both boys and girls), after

⁹⁸⁴ Quraishi A, ‘Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective’ (1999) 18(2) *Michigan Journal of International Law* 287–320

⁹⁸⁵ Welchman L, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam University Press, 2007)

⁹⁸⁶ Ostien P, *Sharia Implementation in Northern Nigeria 1999–2006: A Sourcebook Vols I–III* (Spectrum Books, 2007)

⁹⁸⁷ Ekhator EO, ‘The Child Rights Act in Nigeria: A Critical Legal Appraisal’ (2016) 22(2) *Journal of Law and Policy* 187–204

⁹⁸⁸ Ibrahim N, ‘Harmonising Islamic Law and Child Rights in Malaysia’ (2018) 26(2) *IIUM Law Journal* 233–251

⁹⁸⁹ UK Foreign, Commonwealth & Development Office, *Report on Family Law Practices and International Child Custody Cases* (UK Government, 2023)

which the child may choose whether to live with the mother or father.⁹⁹⁰ Courts also have discretion to deviate from this default in exceptional welfare cases.⁹⁹¹

One legal analysis notes that in Egypt's revised personal status law, the custody age is pegged at 15, allowing children beyond that age to make a choice of custodian, while maintaining that the mother retains priority until that stage.⁹⁹² Moreover, in Egypt, the hierarchy of custodial claimants typically follows: mother, maternal female relatives, then father.⁹⁹³ This system attempts to balance classical Islamic rules with state law and considers the welfare of children as part of the judicial assessment.⁹⁹⁴ Because Egypt's civil and Islamic legal frameworks are more integrated, custody decisions are subject to both religious doctrine and statutory law. Egypt provides a useful example of how Islamic principles are codified into civil law. The Egyptian Personal Status Law⁹⁹⁵ specifies that the mother has priority in custody until a certain age (15 years), after which the child can choose between parents. The law was amended in 2005 to reflect a more child-focused approach while preserving paternal guardianship.⁹⁹⁶ However, Egypt's constitutional and international human rights commitments provide judicial discretion to deviate from classical positions in the child's best interest.⁹⁹⁷

4.3.3: Malaysia: Dual System and State Shariah Courts

Malaysia operates a dual legal system, where Syariah courts (Islamic courts) have jurisdiction over Muslims in matters of family law, including child custody and guardianship.⁹⁹⁸ Under Malaysian Islamic family law, many states follow default rules that favour mothers for custodial care of young children, but courts may depart from that if the father's custodial role better serves the child's welfare.⁹⁹⁹ Some state Islamic family statutes include provisions that allow the court to consider the child's preference and welfare factors.¹⁰⁰⁰ Because custody is handled by Syariah courts, state legislative oversight also affects how Islamic doctrine is operationalized, and courts

⁹⁹⁰ Ibid.

⁹⁹¹ Library of Congress, *Child Custody Laws: Global Perspectives* (Library of Congress, 2019)

⁹⁹² Egyptian Streets, 'Reforming Child Custody Laws: Egypt's Shift Towards Maternal Rights' (15 March 2025) <<https://egyptianstreets.com/2025/03/15/reforming-child-custody-laws>>

⁹⁹³ UK Foreign, Commonwealth & Development Office

⁹⁹⁴ Library of Congress,

⁹⁹⁵ (Law No. 25/1929)

⁹⁹⁶ Al-Sharmani M, '

⁹⁹⁷ Tadros M, 'The Politics of Religious Freedom in Egypt' (2011) 110(740) *Current History* 338–343

⁹⁹⁸ Syariah Court, Overview of Syariah Court System in Malaysia (n.d.) <<https://www.syariah.gov.my>> accessed 7th August 2025

⁹⁹⁹ Che Soh R, 'Custody of Children Under Islamic Law' (1993) 1(1) *Jurnal Syariah* 45–58

¹⁰⁰⁰ Ibid.

often integrate modern child welfare norms with Islamic principles.¹⁰⁰¹ Malaysia operates a dual legal system: Islamic law governs Muslims under state controlled Syariah courts, while civil law applies to non Muslims. Custody laws under the Islamic Family Law¹⁰⁰² prioritize the mother's custody rights for children below the age of seven. However, Section 84 allows courts to consider the child's welfare and views in overriding default rules.¹⁰⁰³

4.3.4: Pakistan

In Pakistan, child custody is governed by the Guardians and Wards Act, 1890, which incorporates Islamic principles but grants considerable judicial discretion. Courts often favour the mother for young children but consider the father's financial and moral suitability for long-term custody. The courts apply a best interest of the child test, allowing deviation from traditional rules where necessary.¹⁰⁰⁴ However, scholars have noted inconsistencies in court rulings due to the tension between classical Islamic jurisprudence and statutory law.¹⁰⁰⁵

4.3.5: Tunisia

Tunisia represents one of the most progressive Muslim majority legal systems, where Islamic law has been significantly reformed. Under the Code of Personal Status (1956), both parents are considered equal custodians. The state prioritizes gender equality and child welfare, moving away from traditional paternal guardianship models.¹⁰⁰⁶ Tunisia's secular legal tradition allows courts greater flexibility to protect children's rights in line with international standards

4.4: Summary on Jurisdictional comparison

These case studies reveal diverse approaches to paternal custody rights under Islamic law. While classical fiqh provides foundational rules, modern states increasingly incorporate public law considerations, such as constitutional rights and international human rights obligations, in determining child custody post-divorce. This comparative perspective underscores the dynamic nature of Islamic family law and the role of state institutions in aligning custody decisions with the evolving concept of the child's best interest.

¹⁰⁰¹ UK Foreign, Commonwealth & Development Office, Report on Family Law Practices and International Child Custody Cases (UK Government, 2023)

¹⁰⁰² Federal Territories Islamic Family Law Act 1984 (Act 303) (Laws of Malaysia)

¹⁰⁰³ Yusof NM, 'The Best Interest of the Child in Custody Disputes: A Comparative Analysis Between Islamic Law and Civil Law in Malaysia' (2015) 5(1) International Journal of Social Science and Humanity 103–107

¹⁰⁰⁴ Ali SS, Modern Challenges to Islamic Law (Cambridge University Press, 2013)

¹⁰⁰⁵ Quraishi A, 'Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective' (1999) 18(2) Michigan Journal of International Law 287–320

¹⁰⁰⁶ Charrad MM, States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco (University of California Press, 2001)

5.00: Challenges and Legal Gaps

Challenges include lack of uniform codification of custody within Islamic law in many countries, leading to conflicts between Sharia courts and secular family courts, inadequate enforcement of custody orders, and gender bias. Some mothers misuse custody rights or fathers contest without genuine welfare concerns.¹⁰⁰⁷

Challenges include lack of uniform codification of custody within Islamic law in many countries, conflicts between Sharia courts and secular family ...

a. Interpretational Differences Among Schools of Thought: Islamic law is not monolithic—custody rules vary across the Hanafi, Maliki, Shafi'i, and Hanbali schools. These variations lead to inconsistent rulings and confusion.¹⁰⁰⁸

b. Best Interest of the Child vs. Paternal Right: The father is often seen as the default guardian (wali), even when the child's best interest might lie elsewhere—raising ethical and legal dilemmas.¹⁰⁰⁹

c. Gender-Based Assumptions: Custody presumptions can be patriarchal—mothers may lose custody upon remarriage, while fathers retain it regardless of their marital or financial status.¹⁰¹⁰

d. Limited Judicial Discretion: In some countries, judges have limited ability to override paternal rights, even in abusive or neglectful situations.¹⁰¹¹

e. Weak State Oversight: In many jurisdictions, there is minimal state intervention in family matters governed by Shari'ah, which can hinder the enforcement of child welfare standards.¹⁰¹²

f. Conflict with International Standards: Some Islamic custody rules may conflict with international instruments like the UN Convention on the Rights of the Child.¹⁰¹³ particularly on issues of equal parental responsibility and child participation.

6.0: Conclusion

In conclusion, while Islamic law provides a coherent doctrine for custody, a purely paternal claim must always be mediated by welfare standards and public law oversight. States should codify rules that integrate religious principles with constitutional child rights, ensure judicial training to

¹⁰⁰⁷ Ogunniran I, *Enforcing the Rights of the Muslim Child in Nigeria: Conflicts between the Child's Rights Act and Islamic Law* (n.d).

¹⁰⁰⁸ Yusof NM, 'The Best Interest of the Child in Custody Disputes: A Comparative Analysis Between Islamic Law and Civil Law in Malaysia' (2015)

¹⁰⁰⁹ Al-Sharmani M

¹⁰¹⁰ Che Soh R, 'Custody of Children Under Islamic Law

¹⁰¹¹ Tadros M, 'The Politics of Religious Freedom in Egypt

¹⁰¹² Charrad MM, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco*

¹⁰¹³ United Nations, *Convention on the Rights of the Child* (United Nations Treaty Series, 1989)

evaluate welfare criteria impartially, and require custody decisions to be subject to appeal and review to prevent injustice. Reform efforts should aim for harmonization of Islamic custody rules with child welfare statutes, protecting both religious integrity and the rights of children. Paternal custody under Islamic law reflects deeply rooted religious and cultural values, but it also raises complex legal and ethical issues in the modern context. While the father's role as guardian is recognized, contemporary interpretations must balance this with the best interests of the child and align with evolving human rights standards. A public law approach that includes judicial oversight and child protection mechanisms is essential to ensure custody decisions serve both religious principles and the welfare of the child.

7.0: Recommendation

- a. Codify Clear Custody Guidelines in Muslim-Majority Jurisdictions Legislatures in Islamic countries or states applying Islamic personal law should provide clear statutory frameworks on paternal custody rights after divorce, reflecting both classical jurisprudence and evolving interpretations aligned with child welfare standards.¹⁰¹⁴
- b. Incorporate Best Interest of the Child as a Paramount Principle Legal reforms should prioritize the best interest of the child as a guiding principle in custody decisions, balancing it with religious values. This ensures both spiritual and psychosocial development of the child.¹⁰¹⁵
- c. Establish Oversight Mechanisms by Family Courts Family courts should exercise supervisory jurisdiction over custody arrangements, including paternal custody, to ensure they align with public interest, child rights, and fundamental freedoms as enshrined in national constitutions and international treaties.¹⁰¹⁶
- d. Promote Gender-Neutral Interpretation of Custody Rights Courts and lawmakers should encourage evolving interpretations of Islamic jurisprudence that do not assume automatic maternal or paternal custody based solely on gender, but on capability and stability.¹⁰¹⁷
- e. Enhance Capacity of Religious and Legal Officers Judicial officers and Shariah court judges should undergo regular training in child psychology, international human rights law, and evolving Islamic legal scholarship to ensure child-sensitive and rights-based custody decisions.¹⁰¹⁸

¹⁰¹⁴ Nasir JJ, *The Islamic Law of Personal Status* (3rd edn, Kluwer Law International, 2002)

¹⁰¹⁵ Esposito JL & DeLong-Bas NJ, *Women in Muslim Family Law* (2nd edn, Syracuse University Press, 2001)

¹⁰¹⁶ United Nations, *Convention on the Rights of the Child* (United Nations Treaty Series, 1989)

¹⁰¹⁷ Welchman L, *Women's Rights and Islamic Family Law: Perspectives on Reform* (Zed Books, 2011)

¹⁰¹⁸ Ali K, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (Oneworld Publications, 2016)

f. Develop a Standard Custody Evaluation Protocol Governments should introduce standardized protocols that assess emotional, educational, and health-related needs of the child before awarding custody, regardless of whether the parent is the mother or father.

g. Encourage Alternative Dispute Resolution (ADR) in Custody Cases Islamic mediation and conciliation methods should be promoted to resolve custody disputes amicably, provided they prioritize the welfare of the child and operate within a state-supervised legal framework.

THE ROLE OF ISLAMIC FINANCIAL INSTITUTIONS IN PROMOTING PHILANTHROPY IN NIGERIA: A CRITICAL ASSESSMENT OF PRACTICES, IMPACT, AND REGULATORY FRAMEWORKS

Atiku Said Haliru*

Musa Alkali Lawan**

Abstract

This study critically examines the role of Islamic financial institutions (IFIs) in fostering philanthropic activities within Nigeria's socio-economic landscape. Drawing upon both theoretical frameworks and empirical findings, the research explores the scope, mechanisms, and effectiveness of philanthropic interventions facilitated by IFIs, with particular attention to zakat (obligatory almsgiving), waqf (endowments), and sadaqah (voluntary charity). Utilizing a mixed-methods approach—including structured interviews, surveys, and content analysis of financial disclosures—the study evaluates the extent of institutional involvement in sectors such as education, healthcare, poverty alleviation, and community development. The findings reveal that while Islamic financial institutions play a significant and multifaceted role in philanthropy, their efforts are constrained by regulatory ambiguities, limited public engagement, and insufficient institutional coordination. This paper offers strategic recommendations aimed at strengthening the operational frameworks, regulatory support, and public awareness initiatives necessary to enhance the social impact of Islamic financial institutions. The study contributes to global discourses on ethical finance and faith-based philanthropy, with particular relevance to policymakers, scholars, and development practitioners in emerging Islamic finance markets.

Keywords: *Islamic Finance, Philanthropy, Zakat, Nigeria, Financial Inclusion, Regulatory Framework, Social Impact*

1.1 Introduction

In recent decades, Islamic finance has emerged as a globally recognized model of ethical and interest-free financial intermediation. Its rapid expansion across both Muslim-majority and non-Muslim countries has not only reshaped conventional banking paradigms but has also opened new frontiers in the domain of faith-based philanthropy. One of the defining features of Islamic finance is its foundational emphasis on social justice, equity, and the redistribution of wealth—principles enshrined in Islamic teachings through mechanisms such as **zakat** (compulsory almsgiving), **sadaqah** (voluntary charity), and **waqf** (endowments). Within this evolving global landscape, Nigeria stands out as a compelling case study. As one of Africa's largest economies and home to a significant Muslim population, Nigeria has witnessed the increasing institutionalization of Islamic finance. The growth of Islamic banks, microfinance institutions, and takaful (Islamic insurance) providers has been accompanied by a renewed emphasis on

* PhD, Lecturer in the Department of Sharia, Faculty of Law, University of Maiduguri, Borno State, Nigeria. He is available on: 0803 389 2837, 0802 372 5683 or atikus2020@gmail.com.

** PhD, Lecturer in the Department of Public Law, Faculty of Law, University of Maiduguri, Borno State, Nigeria. He is available on: 0706 075 7000 or musaalkalilawan@gmail.com.

integrating charitable objectives into financial operations. Consequently, Islamic financial institutions (IFIs) in Nigeria have assumed a dual role—facilitating financial services in accordance with Shariah principles while also contributing to philanthropic and community-oriented initiatives.

Philanthropy in Islam is not peripheral but rather integral to socio-economic governance. The principles of Islamic philanthropy are designed to reduce inequality, support vulnerable populations, and foster sustainable development. In Nigeria, Islamic financial institutions have played an increasingly visible role in actualizing these ideals. Through structured zakat funds, social investment schemes, and partnerships with NGOs and religious bodies, IFIs are addressing gaps in education, healthcare, housing, and poverty alleviation. However, despite these advancements, several critical challenges persist. The regulatory environment governing Islamic philanthropy remains fragmented, with inconsistencies in zakat administration and a lack of comprehensive policy frameworks for institutional waqf. Public awareness regarding the role of IFIs in philanthropy also remains limited, contributing to underutilized resources and fragmented impact. Moreover, many Islamic financial institutions face operational and structural constraints that hinder the scaling of their philanthropic efforts. This study, therefore, seeks to provide a comprehensive analysis of the philanthropic engagements of Islamic financial institutions in Nigeria. It examines not only the extent of their contributions but also interrogates the strategic motivations, governance structures, and socio-religious factors that influence their practices. The research further evaluates how institutional philanthropy is shaped by Nigeria's legal and regulatory environment, with the goal of proposing actionable strategies for enhancing the effectiveness, transparency, and sustainability of philanthropic interventions by IFIs.

1.2 Islamic Finance Institutions

Islamic financial institutions have gained significant prominence in the global financial landscape, offering an alternative model rooted in Sharia principles. This comprehensive paper explores the foundations, practices, and impact of Islamic financial institutions, considering their growth, challenges, and contributions to the broader financial system. The study draws on a range of scholarly works, reports, and case studies to provide a thorough analysis of the key aspects of Islamic finance. So also, Islamic finance, guided by Sharia principles, has witnessed substantial growth in recent decades. This paper begins by providing an overview of the foundational principles that underpin Islamic financial institutions, emphasizing concepts such as interest-free transactions, risk-sharing, and adherence to ethical standards.¹⁰¹⁹

1.2.0 Historical Development of Islamic Finance

A historical perspective is crucial to understanding the evolution of Islamic finance. This section traces the roots of Islamic banking and finance, from the early Islamic economic system to the establishment of the first modern Islamic bank in the 20th century. Key milestones and developments in the growth of Islamic finance are explored. The historical development of Islamic finance is a complex and multifaceted journey that spans several centuries.¹⁰²⁰ While I can

¹⁰¹⁹ Al-Salem, F. H. Islamic financial product innovation. *International Journal of Islamic and Middle Eastern Finance and Management*, 2 (3), (2009).187-200.

¹⁰²⁰ Amin, H. Choice criteria for Islamic home financing: Empirical investigation among Malaysian bank customers. *International Journal of Housing Markets and Analysis*, (2008).1(3), 256-274.

provide a brief overview and some key references, it's important to note that this is a vast and evolving field, and new research may have been conducted since my last update in January 2022. For more in-depth information, it's recommended to refer to academic journals, books, and other reputable sources.¹⁰²¹

1.2.1 Historical Overview:

1. Early Islamic Economic System (7th–12th centuries).¹⁰²² The principles of Islamic finance find their roots in the economic teachings of Islam, including prohibition of usury (riba) and emphasis on fair and ethical economic conduct.¹⁰²³
2. Islamic Banking Pioneers (20th century).¹⁰²⁴ Mit Ghamr Savings Bank (1963). Often considered the first modern attempt at Islamic banking in Egypt. Dubai Islamic Bank (1975). One of the earliest full-fledged Islamic banks, established in the UAE.¹⁰²⁵
3. Development and Standardization (1970s–1980s).¹⁰²⁶ The establishment of Islamic financial institutions and regulatory bodies, such as the Islamic Development Bank (IDB) and Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI).¹⁰²⁷
4. Islamic Capital Market and Sukuk (1990s–2000s).¹⁰²⁸ Growth of Islamic capital markets and the issuance of Sukuk (Islamic bonds) as alternative financing tools.¹⁰²⁹
5. Global Expansion (21st century).¹⁰³⁰ Expansion of Islamic finance globally, with Islamic windows in conventional banks and the emergence of new Islamic financial institutions.¹⁰³¹
6. Challenges and Innovations. Ongoing challenges in harmonizing Islamic finance with contemporary financial systems, and innovations such as financial technology in Islamic finance.¹⁰³²

1.2.2. Sharia Compliance and Financial Instruments

One of the distinctive features of Islamic financial institutions is their commitment to Sharia compliance. This section delves into the mechanisms employed to ensure adherence to Islamic law, including the role of Sharia boards, the prohibition of Riba (usury or interest), and the development of innovative financial instruments such as Sukuk, Mudarabah, and Murabahah. Islamic finance operates within the framework of Sharia, the Islamic law, which prohibits certain financial activities, such as usury (riba) and excessive uncertainty (gharar). As a result, financial

¹⁰²¹ Gavin, J. Islamic finance makes headway in the energy sector. *Petroleum economist*, (2010).77(6), 12-14.

¹⁰²² - "Introduction to Islamic Finance: Theory and Practice" by Kabir Hassan, Michael Mahlknecht.

¹⁰²³ - "Islamic Finance: The Regulatory Challenge" by Simon Archer, Rifaat Ahmed Abdel Karim, and Simon Archer.

¹⁰²⁴ - "Islamic Finance in a Nutshell: A Guide for Non-Specialists" by Brian Kettell.

¹⁰²⁵ - *Journal of Islamic Economics, Banking and Finance*.

¹⁰²⁶ - *Islamic Economic Studies* by the Islamic Research and Training Institute (IRTI).

¹⁰²⁷ - Reports from Islamic financial institutions like the Islamic Financial Services Board (IFSB) and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI).

¹⁰²⁸ - Articles in reputable financial publications and academic journals.

¹⁰²⁹ - The Islamic Finance Gateway by the World Bank: [Islamic Finance Gateway](<http://www.islamicfinancegateway.com/>).

¹⁰³⁰ - *Islamic Finance News*: [Islamic Finance News](<https://www.islamicfinancenews.com/>).

¹⁰³¹ - International Center for Education in Islamic Finance (INCEIF).

¹⁰³² - Islamic Research and Training Institute (IRTI).

instruments used in Islamic finance must adhere to these principles, ensuring they are Sharia-compliant.¹⁰³³ This note provides an overview of Sharia compliance and key Sharia-compliant financial instruments.

Sharia Compliance: Sharia compliance in financial transactions is based on principles outlined in the Quran and Sunnah (traditions of Prophet Muhammad). Some key principles include:

1. Prohibition of Riba (Usury). Sharia strictly prohibits usury, emphasizing fair and equitable transactions. This prohibition extends to any form of unjust enrichment.¹⁰³⁴
2. Avoidance of Gharar (Excessive Uncertainty). Transactions with excessive uncertainty or ambiguity (gharar) are discouraged. Sharia-compliant instruments promote transparency and fairness.¹⁰³⁵
3. Prohibition of Speculation (Maisir). Gambling or speculative transactions are prohibited. Investments should be based on real economic activities.¹⁰³⁶
4. Ethical Investment. Investments in businesses that involve activities such as alcohol, gambling, or pork production are generally avoided. Sharia-compliant investments prioritize ethical and socially responsible ventures.¹⁰³⁷

Sharia-Compliant Financial Instruments.

1. Mudarabah. Description. A profit-sharing partnership where one party provides capital, and the other manages the business. Profits are shared according to pre-agreed ratios, while losses are borne by the capital provider. Mudarabah is a key Islamic financing structure used in various financial transactions, including Islamic banking and investment funds.¹⁰³⁸
2. Murabaha. A cost-plus financing arrangement where the seller discloses the cost of the asset and adds a markup. The buyer pays the total amount in installments. Commonly used in trade finance, Murabaha allows for deferred payments while avoiding interest.¹⁰³⁹
3. Ijarah. A leasing contract where the lessor (owner) leases an asset to the lessee for a specified period and rental amount. Ijarah is widely used for financing real estate and equipment, providing an alternative to interest-based loans.¹⁰⁴⁰
4. Sukuk (Islamic Bonds). Securities representing ownership in tangible assets or services. Sukuk holders receive a share of profits generated by the underlying assets. Sukuk have gained

¹⁰³³ Camacho, J. (2005). Islamic financing for large infrastructure projects. *Journal of Property Investment and Finance*, 1 (2), 283-284.

¹⁰³⁴ Yong, Y.C., Extending mediation practice to the banking Industry. <http://elib.uum.edu.my/kip/Record/um668090>. (2023)

¹⁰³⁵ Alexander, A. J. Shifting title and risk: Islamic project finance with western partners. (2011).

¹⁰³⁶ Abedifar, P., P. Molyneux, and A. Tarazi. "Risk in Islamic Banking." *Review of Finance*, (2013) 6(17) 2035–2096.

¹⁰³⁷ Farooq, M. and S. Zaheer, "Are Islamic Banks More Resilient During Financial Panics?" *Pacific Economic Review*, (2015), 20 (1). pp. 101–124

¹⁰³⁸ Miller, N., J. Challoner, and A. Atta, "UK Welcomes the Sukuk," *International Financial Law Review* (2007) 26 (5) 24–25.

¹⁰³⁹ Taylor, Timothy, *Finance and Development*, June, (2014) 2(51) (Washington: International Monetary Fund).

¹⁰⁴⁰ Wilson, Rodney, "Innovation in Structuring of Sukuk Securities," *Humanomics* (2008) 24(3) 170–81.

popularity in global financial markets as Sharia-compliant investment instruments, contributing to the growth of Islamic capital markets.¹⁰⁴¹

5. Takaful (Islamic Insurance). A cooperative insurance system where participants contribute premiums into a pool. In case of a loss, funds from the pool are used to compensate the affected party. Takaful aligns with the principles of mutual cooperation and shared responsibility, providing insurance coverage without violating Islamic prohibitions.¹⁰⁴²

In conclusion, Sharia compliance in financial instruments ensures adherence to ethical and moral principles, fostering financial transactions that promote economic justice and fairness. As Islamic finance continues to evolve, innovation in Sharia-compliant instruments plays a crucial role in meeting the diverse needs of investors and businesses while maintaining adherence to Islamic principles.

1.2.3 Global Growth and Market Dynamics

Islamic finance has transcended national boundaries, gaining a foothold in both Muslim-majority and non-Muslim-majority countries. An examination of the global growth of Islamic financial institutions, the establishment of Islamic financial hubs, and the factors driving international interest in Islamic finance is conducted. Global growth and market dynamics are intricately connected, reflecting the complex interplay of economic, political, technological, and social factors on a worldwide scale.¹⁰⁴³ This note aims to provide a brief overview of the current state of global growth and the key dynamics shaping international markets.

a. Global Growth.

1. Economic Expansion. Despite periodic challenges, the global economy has generally experienced growth over the years, driven by factors such as technological advancements, globalization, and demographic changes.¹⁰⁴⁴

2. Emerging Markets. Emerging economies, particularly in Asia and Africa, have played a significant role in global growth. These regions often experience rapid industrialization, urbanization, and a rising middle class.¹⁰⁴⁵

3. Trade and Investment. International trade and cross-border investments contribute to global growth. Trade agreements, such as free trade agreements and regional partnerships, facilitate economic cooperation and stimulate economic activities.¹⁰⁴⁶

¹⁰⁴¹ Balz, K., A murabaha transaction in english court. *Islamic Law Soc.*, 11 : (2004.) 117-134.

¹⁰⁴² Rashid, S.R., Alternative dispute resolution in the context of Islamic law. *Vindobona J. Int. Comm. Law Arbitr.*, (2004.) 8: 95-118.

¹⁰⁴³ Asian Development Bank and Islamic Financial Services Board (ADB and IFSB) “*Islamic Finance for Asia: Development, Prospects, and Inclusive Growth*.” (2015).

¹⁰⁴⁴ Beck, T., A. Demirgüç-Kunt and O. Merrouche, “Islamic vs. Conventional Banking Business Model, Efficiency and Stability,” *Journal of Banking and Finance* (2013) No. 37 Vol. 2, 433–47.

¹⁰⁴⁵ Merna, T., Chu, Y., & Al-Thani, F. F. *Project finance in construction: A structured guide to assessment*. John Wiley & Sons. (2010).

¹⁰⁴⁶ Salim, D. P. *The Transnational and the Local in the Politics of Islam: The Case of West Sumatra, Indonesia*. Springer. (2015).

4. Technological Innovation. Advances in technology, including artificial intelligence, blockchain, and renewable energy, have transformative effects on industries worldwide, fostering innovation, efficiency, and new economic opportunities.¹⁰⁴⁷

5. Global Challenges. Challenges such as geopolitical tensions, climate change, and global health crises (e.g., COVID-19) pose threats to global growth. Resilience and adaptability are crucial for mitigating these challenges.¹⁰⁴⁸

b. Market Dynamics.

1. Financial Markets. Global financial markets play a central role in facilitating capital flows, investment, and risk management. Stock exchanges, bond markets, and currency markets are interconnected and respond to various economic indicators.¹⁰⁴⁹

2. Technology and Digitalization. The digital transformation is reshaping market dynamics, with e-commerce, digital currencies, and fintech innovations influencing how businesses operate and consumers engage in economic activities.¹⁰⁵⁰

3. Sustainability and ESG. Environmental, Social, and Governance (ESG) considerations have become integral to market dynamics. Investors increasingly prioritize sustainable and socially responsible investments, influencing corporate practices and policies.¹⁰⁵¹

4. Global Supply Chains. Complex global supply chains connect producers and consumers across borders. Disruptions, as seen in the wake of the COVID-19 pandemic, highlight the importance of resilience and adaptability in supply chain management.¹⁰⁵²

5. Regulatory Environment. Regulatory frameworks shape market dynamics, influencing investor confidence and business operations. Changes in regulations, both at the national and international levels, can impact market behavior.¹⁰⁵³

In conclusion, it should be noted that the below observations were made in order to enhance and complete the research of this nature.¹⁰⁵⁴

¹⁰⁴⁷ Mohd Bahroddin Badri & Said Adekunle Mikail Istisna "Sukuk—A Preliminary Glimpse, Monthly Publication Bloomberg and ISRA. (2014).

¹⁰⁴⁸ Ben Naceur, S., A. Barajas and A. Massara "Can Islamic Banking Increase Financial Inclusion?" IMF Working Paper 15/31, (Washington: International Monetary Fund). (2015)

¹⁰⁴⁹ Siddiqi, M. N. "Islamic Banking and Finance in Theory and Practice: A Survey of State of the Art," *Islamic Economic Studies*, No. 2 Vol. 13, February 2006.

¹⁰⁵⁰ Maziad, S., and AlSaeed, K., "Sukuk Market: Overview and Financial Stability Aspects," IMF Working Paper (forthcoming), Washington: International Monetary Fund. (2015),

¹⁰⁵¹ Jobst, A., "The Economics of Islamic Finance and Securitization," IMF Working Paper 07/117, (Washington: International Monetary Fund). (2007),

¹⁰⁵² Sole, Juan, "Introducing Islamic Banks into Conventional Banking Systems," IMF Working Paper 07/175 (Washington: International Monetary Fund). 2007,

¹⁰⁵³ Khan, Mohsin and Abbas Mirakhor "Monetary Management in an Islamic Economy," *Islamic Economics*, Vol. 6, 3–21, Islamic Economics Research Centre, Jeddah, Saudi Arabia. (1994),

¹⁰⁵⁴ Hasan, M. and Dridi, J., "The Effects of the Global Crisis on Islamic and Conventional Banks: A Comparative Study," *Journal of International Commerce, Economics and Policy*, Vol. 2, No. 2, December 2011.

1. Geopolitical Considerations. The influence of geopolitical events, such as trade tensions, regional conflicts, and diplomatic relations, can have profound effects on global markets.¹⁰⁵⁵
2. Demographic Trends. Population dynamics, including aging populations in some regions and youth bulges in others, contribute to consumption patterns, labor markets, and overall economic trends.¹⁰⁵⁶
3. Pandemic Impact. The COVID-19 pandemic has underscored the interconnectedness of global markets and the need for adaptive strategies in the face of unexpected disruptions.¹⁰⁵⁷
4. Innovation and Disruption. Technological advancements, including automation and artificial intelligence, drive both opportunities and challenges, reshaping industries and business models.¹⁰⁵⁸
5. Climate Risk. Growing awareness of climate change risks has led to increased focus on sustainable practices and disclosure of climate-related risks, influencing investment decisions and corporate strategies.¹⁰⁵⁹

In navigating the evolving landscape of global growth and market dynamics, stakeholders must remain vigilant, adaptable, and forward-thinking to capitalize on opportunities and address emerging challenges.¹⁰⁶⁰

1.2.4 Challenges and Opportunities

Despite its growth, Islamic finance faces challenges, including standardization, regulatory issues, and misconceptions. This section critically analyzes these challenges while highlighting opportunities for further expansion and integration into the global financial system. Islamic finance, rooted in Sharia principles, faces a set of unique challenges and opportunities.¹⁰⁶¹ These factors arise from the need to adhere to ethical and Sharia-compliant practices while operating within a global financial landscape. This note explores the key challenges and opportunities in the realm of Islamic finance.¹⁰⁶²

a. Challenges.

1. Complexity of Sharia Compliance. Ensuring Sharia compliance in financial transactions can be complex, requiring extensive legal and religious expertise. Ongoing education and collaboration

¹⁰⁵⁵ Iqbal, M., M. Ariff, and S Mohamad. *The Islamic Debt Market for Sukuk Securities* Edward Elgar Northampton, MA, USA. (2014),

¹⁰⁵⁶ UKIFS Islamic Finance Report (October 2013). Ernst and Young (2015) World Islamic Banking Competitiveness Report 2014–15.

¹⁰⁵⁷ Thomson Reuters, *The State of the Global Islamic Economy 2013 Report*.

¹⁰⁵⁸ Islamic Financial Services Board, *Islamic Financial Services Industry Stability Report*, (Kuala Lumpur, Malaysia: IFSB). (2013),

¹⁰⁵⁹ Berman, G.S., 1995. Facilitated negotiation: An effective ADR technique. *Dispute Resolut J.*, 50: 18-29.

¹⁰⁶⁰ Lawrence, L, P. Morton and H. Khan, Dispute resolution in Islamic finance. *Global Islamic Finance Report* 2012. April, 2012.

¹⁰⁶¹ Markom, R., S.A. Pitchay, Z.A. Zainol, A.A. Rahim and R.M.A.R. Merican, Adjudication of Islamic bankmg and finance cases in the civil courts of Malaysia. *Eur. J Law Econ*, 2013. 36 1-34.

¹⁰⁶² Mcmillen, M.J. Shari'ah compliant project finance: An overview, including structure, *Journal of Islamic Banking and Finance*, January 2008.

between Islamic scholars and financial experts are crucial for navigating the intricate requirements of Sharia law.¹⁰⁶³

2. Standardization and Harmonization. Lack of standardized practices across Islamic financial institutions and jurisdictions creates challenges for harmonization and consistency. Efforts such as those by AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions) aim to establish common standards, enhancing transparency and comparability.¹⁰⁶⁴

3. Risk Management and Innovation. Islamic finance faces challenges in developing sophisticated risk management tools while promoting financial innovation within the bounds of Sharia. Balancing risk mitigation with the principles of Sharia requires ongoing research and innovation in financial instruments.¹⁰⁶⁵

4. Education and Awareness. Limited understanding of Islamic finance among both Muslims and non-Muslims poses a challenge to its global adoption. Education initiatives and awareness campaigns are essential to promote a better understanding of Islamic finance principles and benefits.¹⁰⁶⁶

5. Global Economic Integration. Integrating Islamic finance into the global financial system while maintaining Sharia compliance poses challenges, particularly in cross-border transactions. International cooperation, regulatory frameworks, and standardization efforts contribute to the seamless integration of Islamic finance into the global economy.¹⁰⁶⁷

b. Opportunities.

1. Ethical and Responsible Finance. The ethical foundations of Islamic finance provide opportunities for institutions to position themselves as promoters of responsible and sustainable finance. Aligning with Environmental, Social, and Governance (ESG) principles enhances the appeal of Islamic finance to socially conscious investors.¹⁰⁶⁸

2. Growing Global Demand. The increasing awareness of Islamic finance and its principles has created a growing demand, not only in Muslim-majority countries but also in non-Muslim-majority regions. Financial institutions can tap into new markets by offering Sharia-compliant products and services to a diverse customer base.¹⁰⁶⁹

3. Fintech and Innovation. Fintech presents opportunities for Islamic finance to enhance efficiency, accessibility, and customer experience while maintaining compliance with Sharia

¹⁰⁶³ Hassan, M. K., & Soumaré, I. Financial guarantee as an innovation tool in Islamic project finance. In Economic Research Forum Working Papers (No. 0713). Mousavian, IIMF Sukuk Database. (2007, November).

¹⁰⁶⁴ UN., Convention on the recognition and enforcement of foreign arbitral awards. The New York Convention. http://www.uncitral.org/uncitral/en/uncitral_texts/arbitrationfNYConvention.html. 1958.

¹⁰⁶⁵ Khan, Fahim, M. and Mario Porzio, Islamic Banking and Finance in the European Union: A Challenge (U.K., Edward Elgar Publishing Limited). (2010),

¹⁰⁶⁶ Chong, Beng Soon and Ming-Hua Liu, "Islamic Banking: Interest-Free or Interest- Based?" *Pacific-Basin Finance Journal* (2009), No. 17, pp. 125–44.

¹⁰⁶⁷ Çakir, S. and Raei, F., "Sukuk vs. Eurobonds: Is There a Difference in Value-at-Risk?" IMF Working Paper 07/237, (Washington: International Monetary Fund). (2007),

¹⁰⁶⁸ Godlewski, C., R. Turk, and L. Weill, "Sukuk vs. Conventional Bonds: A Stock Market Perspective," *Journal of Comparative Economics* (2013), No. 41, 745–61.

¹⁰⁶⁹ Hesse, H., A. Jobst, and J. Sole, "Trends and Challenges in Islamic Finance," *World Economics*, (2008), No. 9 Vol. 2, pp. 175–93.

principles. Investing in fin-tech solutions tailored to Islamic finance can spur innovation and attract tech-savvy customers.¹⁰⁷⁰

4. Islamic Capital Markets. The development of Islamic capital markets, including Sukuk (Islamic bonds), offers opportunities for diversification and alternative investment avenues. Governments and financial institutions can collaborate to further develop Islamic capital markets, providing investors with a broader range of instruments.¹⁰⁷¹

5. Financial Inclusion. Islamic finance has the potential to promote financial inclusion by providing ethical and accessible financial services to underserved populations. Initiatives focusing on microfinance and Islamic banking in rural areas contribute to inclusive economic growth.¹⁰⁷²

In conclusion, while Islamic finance faces challenges unique to its principles, it also presents opportunities for ethical finance, innovation, and global economic integration. Strategic measures, regulatory cooperation, and ongoing education are essential for navigating these challenges and capitalizing on the opportunities that Islamic finance offers.

1.2.5 Role in Economic Development and Financial Inclusion

Islamic financial institutions often prioritize social responsibility and economic development. This section explores their role in fostering financial inclusion, supporting small and medium enterprises (SMEs), and contributing to sustainable development goals.¹⁰⁷³ Islamic finance, with its ethical principles and focus on equitable wealth distribution, plays a crucial role in fostering economic development and promoting financial inclusion. This note explores how Islamic finance contributes to these key aspects of economic growth.¹⁰⁷⁴

A. Role in Economic Development

1. Ethical Investment and Responsible Finance. Islamic finance encourages ethical investment, directing capital towards businesses and projects that align with Sharia principles, fostering sustainable and responsible economic development. By prioritizing socially responsible and environmentally sustainable investments, Islamic finance contributes to long-term economic growth.¹⁰⁷⁵

2. Infrastructure Development. Islamic finance facilitates funding for infrastructure projects such as transportation, energy, and utilities, which are vital for economic development. Investments in

¹⁰⁷⁰ Gelbard, E., M. Hussain, R. Maino, Y. Mu, and E. Yehoue “Islamic Finance in SubSaharan Africa: Status and Prospects,” IMF Working Paper 14/149 (Washington: International Monetary Fund). (2014),

¹⁰⁷¹ Čihák, Martin and Heiko Hesse, “Islamic banks and financial stability: an empirical analysis”, *Journal of Financial Services Research*, (2010), Vol. 38 No.2, pp. 95–113.

¹⁰⁷² International Monetary Fund, “Malaysia: Financial Sector Assessment Program,” Stress Testing the Malaysian and Labuan IBFC Banking Sectors Technical Note. 2014.

¹⁰⁷³ Islamic Financial Services Board, *Islamic Financial Services Industry Stability Report*, (Kuala Lumpur, Malaysia: IFSB). (2014),

¹⁰⁷⁴ Bemama, Chief Justice say Coult annexed Mediation is free programme. [http://www.the.bomeopost.com/2011/C\)8/26/chief-justice-says-coultannexed-mediation-a-free-programme/](http://www.the.bomeopost.com/2011/C)8/26/chief-justice-says-coultannexed-mediation-a-free-programme/).

¹⁰⁷⁵ Hacioglu, Ü., & Dincer, H. (Eds.). *Managerial Issues in Finance and Banking: A Strategic Approach to Competitiveness*. Springer Science & Business Media. (2013).

infrastructure create jobs, stimulate economic activity, and enhance the overall productivity of a nation.¹⁰⁷⁶

3. Support for Small and Medium Enterprises (SMEs). Islamic finance, with its emphasis on risk-sharing and entrepreneurship, provides SMEs with access to funding, fostering innovation and economic diversification. Supporting SMEs contributes to job creation, economic resilience, and the development of a vibrant entrepreneurial ecosystem.¹⁰⁷⁷

4. Islamic Capital Markets and Sukuk Issuance. Islamic capital markets, including the issuance of Sukuk (Islamic bonds), mobilize funds for large-scale projects, such as infrastructure and development initiatives. Sukuk play a crucial role in financing public and private sector projects, providing an alternative to conventional bonds.¹⁰⁷⁸

5. Foreign Direct Investment (FDI). The principles of Islamic finance attract foreign investors seeking ethical and Sharia-compliant investment opportunities, promoting cross-border investments. Attracting FDI strengthens economic ties between countries, facilitates technology transfer, and contributes to economic development.¹⁰⁷⁹

b. Role in Financial Inclusion.

1. Accessible and Inclusive Financial Services. Islamic finance emphasizes the provision of accessible and inclusive financial services, ensuring that a broader segment of the population can participate in the formal financial system. Through Islamic banking and microfinance initiatives, financial services become available to individuals who may have been excluded from conventional banking.¹⁰⁸⁰

2. Risk-Sharing Models. Islamic finance promotes risk-sharing models, such as Mudarabah and Musharakah, which align with the principles of fairness and inclusivity. These models enable individuals with limited resources to engage in economic activities without bearing the entire financial burden, fostering entrepreneurship.¹⁰⁸¹

3. Microfinance and Poverty Alleviation. Islamic microfinance, based on principles of interest-free lending, supports poverty alleviation by providing financial resources to individuals at the grassroots level. By empowering individuals to start small businesses and improve their economic status, Islamic microfinance contributes to poverty reduction.¹⁰⁸²

¹⁰⁷⁶ Rashwan, M. "How did listed Islamic and Traditional Banks Performed: pre and post the 2008 financial crisis?" *Journal of Applied Finance & Banking*, Vol. 2, No. 2. (2012),

¹⁰⁷⁷ Daellenbach, K., Seymour, R. G., & Webster, C. M. Exploring responsible global leadership in corporate–community transactions. In *Research Handbook of Global Leadership*. Edward Elgar Publishing. (2020).

¹⁰⁷⁸ Brin, P., Nehme, M. and Polančič, G., Corporate Social Responsibility as an Instrument of Increasing Country Competitiveness. *Torun International Studies*, 1(13), 2020. pp.131-150.

¹⁰⁷⁹ Boehe, D.M. and Cruz, L.B., Corporate social responsibility, product differentiation strategy and export performance. *Journal of Business ethics*, 91(2), 2010. pp.325-346.

¹⁰⁸⁰ Demirgüç-Kunt A., L. Klapper, and D. Randall, "Islamic Finance and Financial Inclusion," Policy Research Working Paper 6642, (Washington: World Bank). 2013,

¹⁰⁸¹ Mauro, F., P. Caristi, S. Couderc, A. Di Maria, L. Ho, B. Grewal, S. Masciantonio, S. Ongena and S. Zaher "Islamic Finance in Europe," *Occasional Paper Series*, European Central Bank, June 2013 (Frankfurt am Main, Germany).

¹⁰⁸² Okaro, S. C., & Okafor, G. O. Corporate Social Responsibility in Nigeria. In *Current Global Practices of Corporate Social Responsibility* (2021). (pp. 525-541). Springer, Cham.

4. Zakat and Social Welfare. The obligation of Zakat (charitable giving) in Islamic finance serves as a mechanism for wealth redistribution, supporting social welfare programs and financial inclusion. Zakat funds can be channeled into education, healthcare, and other initiatives that uplift marginalized communities, contributing to overall societal development.¹⁰⁸³

5. Financial Literacy and Education. Islamic finance institutions often prioritize financial literacy programs, empowering individuals with the knowledge and skills needed to make informed financial decisions. Enhancing financial literacy is essential for promoting responsible financial behavior and fostering a culture of savings and investment.¹⁰⁸⁴

In conclusion, Islamic finance emerges as a catalyst for economic development and financial inclusion by aligning financial activities with ethical principles, supporting infrastructure projects, and providing inclusive financial services to diverse segments of society. Its role extends beyond profit-making to contribute to the broader goals of sustainable and equitable economic growth.

1.2.6 Regulatory Frameworks and Governance

The regulatory environment plays a pivotal role in shaping the operations of Islamic financial institutions. This section examines the regulatory frameworks in various jurisdictions, considering the balance between prudential regulations and Sharia compliance.¹⁰⁸⁵ It also discusses governance structures, emphasizing the role of Sharia boards and regulatory bodies. The effectiveness of regulatory frameworks and governance is critical in ensuring the stability, integrity, and fairness of financial systems and various sectors. This note explores the key aspects of regulatory frameworks and governance, acknowledging their significance in maintaining trust and promoting responsible behavior.¹⁰⁸⁶

a. Regulatory Frameworks.

1. Objective of Regulation. Regulatory frameworks are established to maintain financial stability, protect investors and consumers, and prevent systemic risks in various sectors, including finance and commerce. Striking a balance between fostering innovation and ensuring stability is a key challenge for regulators.¹⁰⁸⁷

2. Financial Market Regulation. Regulatory bodies oversee financial markets, ensuring fair and transparent practices, market integrity, and investor protection. Regulatory interventions, such as market surveillance and enforcement of rules, contribute to market efficiency and investor confidence.¹⁰⁸⁸

¹⁰⁸³ Maurer, B. Form versus substance: AAOIFI projects and Islamic fundamentals in the case of sukuk. *Journal of Islamic Accounting and Business Research*, (2010). 1 (1), 32-41.

¹⁰⁸⁴ Motilewa, D. B., & Worlu, R. E. Corporate social responsibility as a tool for gaining competitive advantage. *International Journal of Multidisciplinary Research and Review*. (2015).

¹⁰⁸⁵ Song, I. and C. Oosthuizen, "Islamic Banking Regulation and Supervision: Survey Results and Challenges," IMF Working Paper 14/220, (Washington: International Monetary Fund). (2014),

¹⁰⁸⁶ López Mejía, A., S. Aljabrin, R. Awad, M. Norat and I. Song "Regulation and Supervision of Islamic Banks." IMF Working Paper 14/219 (Washington: International Monetary Fund). (2014),

¹⁰⁸⁷ Islamic Financial Services Board, "Strengthening the Financial Safety Net: The Role of *Shari'ah*-Compliant Lender-of-Last-Resort (SLOLR) Facilities as an Emergency Financing Facility," IFSB Working Paper, (Malaysia: IFSB). (2014),

¹⁰⁸⁸ Saidu, N. A Synthesis of Corporate Social Responsibility Concept, As a Mechanism to Enhanced Organizational Reputation in Nigeria. *Asian Finance & Banking Review*, (2018). 2(1), 30-36.

3. Compliance and Reporting Requirements. Regulatory frameworks impose compliance and reporting obligations on businesses, ensuring transparency and accountability in financial transactions. Stringent reporting requirements enhance the ability of regulators to monitor and address potential risks in a timely manner.¹⁰⁸⁹

4. International Cooperation. Given the global nature of many industries, international cooperation among regulatory bodies is crucial to address cross-border challenges and harmonize regulatory standards. Collaborative efforts strengthen the effectiveness of regulatory frameworks in a rapidly globalizing world.¹⁰⁹⁰

5. Adaptability to Technological Changes. Regulatory frameworks must evolve to address challenges and opportunities presented by technological advancements, such as fin-tech and digital currencies. Regulators need to strike a balance between encouraging innovation and safeguarding against potential risks associated with new technologies.¹⁰⁹¹

b. Governance.

1. Corporate Governance. Corporate governance principles guide how companies are directed and controlled, emphasizing accountability, transparency, and ethical conduct. Effective corporate governance is instrumental in building investor confidence and ensuring the long-term sustainability of businesses.¹⁰⁹²

2. Board Oversight and Independence. Boards of directors play a crucial role in governance, providing oversight and strategic direction. Independence of board members is essential for unbiased decision-making. A balanced and independent board helps mitigate conflicts of interest and ensures that decisions are made in the best interest of stakeholders.¹⁰⁹³

3. Risk Management and Internal Controls. Governance structures should include robust risk management frameworks and internal controls to identify, assess, and manage risks effectively. Proactive risk management contributes to the resilience of organizations in the face of uncertainties.¹⁰⁹⁴

4. Stakeholder Engagement. Effective governance involves engaging with and considering the interests of various stakeholders, including employees, customers, and the broader community.

¹⁰⁸⁹ William, K.H., The Role of KLRCA as a Regional Centre for Arbitration and Mediation. In: Mediation and Arbitration in Asia-Pacific, Rashid, S.R. and S.A. Idid (Eds.). IIUM Press, Kuala 2009. pp: 45-71.

¹⁰⁹⁰ Adeniji, A. A., Osibanjo, A. O., & Abiodun, A. J. Corporate Image: A Strategy for Enhancing Customer Loyalty and Profitability. *Journal of South African Business* (2015).

¹⁰⁹¹ Ganiyu, R. A., Customer satisfaction and loyalty: A study of interrelationships and effects in Nigerian domestic airline industry. *Oradea journal of business and economics*, 2017. 2 (1), 7-20.

¹⁰⁹² Krasicka, O. and S. Nowak, "What's in it for Me? A Primer on Differences between Islamic and Conventional Finance in Malaysia," IMF Working Paper 12/151, (Washington: International Monetary Fund). (2012),

¹⁰⁹³ Salem, M. A., Shawtari, F. A., Shamsudin, M. F. & Hussain, H. I. The relation between stakeholder's integration and environmental competitiveness. *Social Responsibility Journal*, (2016). 12(4), 755-769.

¹⁰⁹⁴ Shabbir, M. S., & Wisdom, O. The relationship between corporate social responsibility, environmental investments and financial performance: evidence from manufacturing companies. *Environmental Science and Pollution Research*, 1-12. (2020).

Prioritizing stakeholder interests fosters a positive organizational culture and contributes to sustainable business practices.¹⁰⁹⁵

5. Regulatory Compliance and Ethical Conduct. Governance frameworks emphasize the importance of compliance with laws and regulations and adherence to ethical standards. Ethical conduct is foundational to maintaining public trust, and governance structures are designed to promote a culture of integrity within organizations.¹⁰⁹⁶

In conclusion, robust regulatory frameworks and governance structures are essential for maintaining the integrity and stability of various sectors. The adaptability of regulations to technological changes and the promotion of ethical behavior through governance contribute to the overall health and sustainability of industries and economies.

1.2.7 Case Studies and Practical Implications

Several case studies are presented to illustrate the real-world impact of Islamic financial institutions. These cases provide insights into successful models, challenges faced, and lessons learned in diverse economic and cultural contexts.¹⁰⁹⁷ Case studies play a crucial role in translating theoretical concepts into practical insights, offering real-world examples that demonstrate the application of principles and strategies. Understanding the practical implications of case studies is essential for informed decision-making and learning from both successes and challenges.¹⁰⁹⁸

a. Case Studies.

1. Learning from Success Stories. Case studies often highlight success stories, showcasing effective strategies, innovations, and best practices that can be replicated in similar contexts. Analyzing successful cases provides valuable insights for organizations seeking to enhance their performance and achieve positive outcomes.¹⁰⁹⁹

2. Identifying Challenges and Solutions. Case studies reveal challenges faced by organizations and how they navigated them, offering practical solutions and lessons learned. Understanding how others addressed challenges provides a roadmap for anticipating and mitigating similar issues in different scenarios.¹¹⁰⁰

¹⁰⁹⁵ Tahir, I., and S. Haron, "Cost and profit efficiency of Islamic banks: International Evidence using the Stochastic Frontier Approach," *Banks and Banks Systems*, (2010), 5(4) 78–83.

¹⁰⁹⁶ Hakkak, M., & Ghodsi, M. Development of a sustainable competitive advantage model based on balanced scorecard. *International Journal of Asian Social Science*, (2015) 5(5) 298-308.

¹⁰⁹⁷ Baele, L., M. Farooq, and S. Ongena "Of Religion and Redemption: Evidence from Default on Islamic Loans." European Banking Center Discussion Paper, No. 2012–008 and Center Discussion Paper, No. 2012–014. and IRTI), (2014). Islamic Financial Services Industry Development: Ten-Year Framework and Strategies. A Mid-Term Review. (2012).

¹⁰⁹⁸ Bemama, Court annexed mediation: A free programme. Bemama-Malaysian National News Agency, August 25, <http://www.mediationworld.net/malaysia/news/full/922.html>. 2011.

¹⁰⁹⁹ Oseni, U.A., Dispute resolution in Islamic banking and finance: Current trends and future perspective. Proceedings of the International Conference on Islamic Financial Services: Emerging Opportunities for Law/Economic Reforms of the Developing Nations, October 6-8, 2009, University of Ilorin and IRTI-IDB, 2009, 1-25.

¹¹⁰⁰ Ogbari, M. E., Dayo, A. T., & Ibidunni, O. S. Concise Adoption of Generic Business Strategies, Virtues for Accomplishing: Corporate Mission in Multinational Firms in Nigeria. *Canadian Social Science*, (2018). 14(1), 9-19

3. Industry-Specific Insights. Case studies are tailored to specific industries, offering industry-specific insights and practical implications that resonate with the unique characteristics and challenges of that sector. Industry-specific case studies provide targeted guidance for professionals and decision-makers within a particular field.¹¹⁰¹

4. Global Perspective. Case studies from diverse geographic locations provide a global perspective, enabling stakeholders to understand how strategies and solutions vary in different cultural, economic, and regulatory contexts. A global perspective enhances adaptability and helps avoid a one-size-fits-all approach in decision-making.¹¹⁰²

b. Practical Implications.

1. Strategic Decision-Making. Practical implications derived from case studies inform strategic decision-making by offering tested approaches and insights into the consequences of various decisions. Decision-makers can leverage practical implications to align strategies with organizational goals and respond effectively to dynamic environments.¹¹⁰³

2. Risk Management. Case studies often shed light on risk factors and how organizations manage and mitigate them, offering practical lessons in risk management. Understanding risk scenarios and effective risk mitigation measures is crucial for developing robust risk management strategies.¹¹⁰⁴

3. Innovation and Adaptation. Case studies highlight instances where organizations embraced innovation and adapted to changing circumstances, providing practical lessons for fostering a culture of innovation. Practicing adaptability and innovation is essential for organizations to thrive in dynamic and competitive environments.¹¹⁰⁵

4. Leadership and Organizational Culture. Case studies illuminate the role of leadership and organizational culture in shaping outcomes, offering practical insights into fostering a positive work environment. Effective leadership and a healthy organizational culture contribute to employee engagement, productivity, and overall success.¹¹⁰⁶

5. Ethical Considerations. Many case studies touch upon ethical dilemmas and decisions, emphasizing the practical importance of ethical considerations in organizational behavior. Organizations can learn from ethical challenges faced by others, emphasizing the importance of a

¹¹⁰¹ Oyewumi, O. R., Ogunmeru, O. A., & Oboh, C. S. Investment in corporate social responsibility, disclosure practices, and financial performance of banks in Nigeria. *Future Business Journal*, (2018). 4(2), 195-205.

¹¹⁰² Yaacob, H, Alternative Dispute Resolution(ADR): Expanding Options in Local and Cross Border Islamic Finance Cases. International Shariah Research Academy For Islamic Finance, Kuala Lumpur, Malaysia. 2012.

¹¹⁰³ Oseni, U.A. and A.U.F. Ahmad, 2011. Dispute resolution in Islamic finance: A case analysis of Malaysia. Proceedings of the 8th International Conference on Islamic Economics and Finance, December 18-20 2011, Center for Islamic Economics and Finance, Qatar Faculty of Islamic Studies, Qatar Foundation, 1-18.

¹¹⁰⁴ Ibid

¹¹⁰⁵ Igbekeyi, O.E. Causal effect of corporate social responsibility on value drivers in the Nigerian manufacturing sector. (2017) 8 (3) *Journal of Emerging trends in Economics and Management Sciences* 169-177.

¹¹⁰⁶ Kammer, A., M. Norat, M. Piñón, A. Prasad, C. Towe, Z. Zeidane, and an IMF Staff Team “Islamic Finance: Opportunities, Challenges, and Policy Options,” IMF Staff Discussion Note 15/05, (Washington: International Monetary Fund 2015).

strong ethical framework and decision-making process.¹¹⁰⁷ In conclusion, case studies provide a bridge between theory and practice, offering tangible examples that stakeholders can analyze and apply. Extracting practical implications from these studies enables organizations to make informed decisions, navigate challenges, and enhance their overall performance.

1.2.8 Future Trends and Prospects

Anticipating the future trajectory of Islamic finance, this section explores emerging trends, technological advancements, and the potential for greater integration into the global financial system.¹¹⁰⁸

1.3 Philanthropic Activities

The legal, regulatory, and policy environment in which nonprofit organizations (NPOs) in Nigeria operate shapes their ability to obtain legal status, access resources, deliver services, and engage in advocacy, all of which are essential for civil society to flourish. The 2015 Enabling Environment National Assessment report for Nigeria¹¹⁰⁹ finds that NPOs operate with fairly few legal restrictions.¹¹¹⁰ They also face few non-legal restrictions, such as burdensome bureaucratic procedures, barriers to access funds, or difficulty in buying or leasing property. Thus the regulatory environment for NPOs is relatively supportive of philanthropic giving.¹¹¹¹

The main legal instrument governing NPOs in Nigeria is the Companies and Allied Matters Act (CAMA). Also governing NPOs are the Companies Income Tax Act (CITA); Taxes and Levies (Approved List for Collection) Act; Value-Added Tax Act and Value-Added Tax Amendment Act; Federal Inland Revenue Service (Establishment) Act; National Planning Commission Act; and Money Laundering Prohibition Act.¹¹¹²

These laws are guided by the 1999 Constitution, as amended in 2010, which guarantees fundamental rights, including freedom of expression, association, and assembly. Nigeria's laws follow the common law tradition, but traditional or indigenous customary law and Shari'a or Islamic law also apply in some matters. Customary and Shari'a laws previously applied only to civil matters, provided all involved parties consented. However, since 1999 some states in the northern part of Nigeria have extended Shari'a, and its coverage is now mandatory for certain criminal matters and social interactions.¹¹¹³ Shari'a does not seem to affect NPOs beyond encouraging charitable giving.¹¹¹⁴ Although registration is not mandatory, organizations wishing

¹¹⁰⁷ Chapra, M. Umer. "The Global Financial Crisis: Can Islamic Finance Help Minimize the Severity and Frequency of Such A Crisis In The Future?" A Paper for the Forum on the Global Financial Crisis held at the Islamic Development Bank. (2008),

¹¹⁰⁸ Ibid

¹¹⁰⁹ See Enabling Environment National Assessments (EENA). *Country Report: Nigeria* (April 2015), http://www.civicus.org/images/EENA_Nigeria.pdf. The report assesses the legal, regulatory, and policy environment for civil society and was designed by CIVICUS World Alliance for Citizen Participation and the International Center for Non-for-Profit Law (ICNL). In Nigeria, the Nigeria Network of NGOs (NNNGO) conducted the research and drafted the report.

¹¹¹⁰ Ibid

¹¹¹¹ Su, W., & Sauerwald, S. Does corporate philanthropy increase firm value? The moderating role of corporate governance. *Business & Society*, (2018). 57(4), 599-635.

¹¹¹² Ibid

¹¹¹³ International Center for Not-For-Profit Law, "NGO Law Monitor: Nigeria," <http://www.icnl.org/research/monitor/nigeria.html>.

¹¹¹⁴ Ibid

to receive donor funding or enjoy tax exemptions and similar benefits must register or be incorporated under CAMA. Part C of CAMA specifically addresses the registration of NPOs as associations with incorporated trustees. The Corporate Affairs Commission (CAC) is the government agency statutorily established under CAMA to register and oversee NPOs. The CAC Companies Regulation, 2012, contains guidelines for the implementation of CAMA in its current form. NPOs are not widely familiar with these regulations.¹¹¹⁵

Nigerians are generally a hospitable people and like to give to their communities. Especially when they are successful in their careers, Nigerians give back to society by paying for the construction of facilities such as schools, churches, mosques, town halls, hospitals, and boreholes. In addition, their giving often benefits sports, healthcare, and education or provides financial encouragement to endeavors that may otherwise be too unpopular or controversial to attract widespread public or governmental support.¹¹¹⁶ Although Nigeria does not have a formal philanthropic sector and can boast of only a few well-known philanthropists, giving is an important pillar of society. Even without documented evidence on the scope of giving, the *World Giving Index 2016* ranks Nigeria the sixth country in the world in terms of the number of people helping a stranger and fifty-sixth in terms of giving behavior overall.¹¹¹⁷ All Nigerians benefit directly from charitable giving when they use the libraries, schools, research institutions, hospitals, performing arts centers, and civic centers that are sustained by the generous donations of the Nigerian people.¹¹¹⁸

1.3.1 Recent Developments

As of the beginning of 2017, there were three bills seeking to regulate the registration and activities of NPOs before Nigeria's National Assembly, all of which were sponsored by members of the opposition party. One of the bills (Non-Governmental Organizations Regulation and Coordination Bill, 2015, SB 111) was before the Senate and two (Civil Society Commission of Nigeria Bill, 2016, HB 705; Non-Governmental Organizations (NGO) Regulatory Commission Bill, 2016, HB 585) were before the House of Representatives.¹¹¹⁹ The Non-Governmental Organizations Regulation and Coordination Bill, 2015 (SB 111) was introduced on October 20, 2015.¹¹²⁰ The bill makes registration mandatory and seeks to establish a board to regulate and coordinate the activities of NGOs in Nigeria. The board would have the right to register NGOs; registration would be valid for five years, after which an NGO will have to reregister. Additionally, the board would be empowered to refuse registration under a number of circumstances, including if the organization's proposed activities or procedures are not in the national interest.¹¹²¹

Introduced on June 2, 2016, the Non-Governmental Organizations (NGO) Regulatory Commission Bill, 2016 (HB 585) passed the second reading stage on July 14, 2016, and was before the House Committee on Civil Society and Donor Parties for further legislative input at the

¹¹¹⁵ Ibid

¹¹¹⁶ Ibid

¹¹¹⁷ Charities Aid Foundation, *CAF World Giving Index 2016* (October 2016), pp. 17, 35, <https://www.cafonline.org/about-us/publications/2016-publications/caf-world-giving-index-2016>. The index describes giving behavior as helping a stranger, donating money, and volunteering time to an organization.

¹¹¹⁸ Ibid

¹¹¹⁹ Ibid

¹¹²⁰ Ibid

¹¹²¹ International Center for Not-For-Profit Law, "NGO Law Monitor: Nigeria," <http://www.icnl.org/research/monitor/nigeria.html>

beginning of 2017.¹¹²² The bill seeks to establish an NGO regulatory commission that supervises, coordinates, and monitors the activities of NGOs. The bill would also make registration mandatory and require NGOs to reregister every two years. Additionally, the bill mandates prior project approval for organizations whose activities are geared towards improving the economic, social, and cultural welfare of a target group within the country. Violations of the bill's provisions would be subject to a fine of 500,000 Naira (approximately \$1,585) or up to 18 months imprisonment, or both.¹¹²³

Civil society has expressed the view that the bill is unsuitable for the sector. At a public hearing held in December 2017 attended by over 150 CSOs, not even one supported the bill. A public hearing report is being developed for formal presentation before the House of Representatives. On November 3, 2017, the Human Rights Agenda Network (HRAN), which is comprised of 23 civil society organizations (CSOs), sued Nigeria's National Assembly to stop further deliberation on the NGO Regulation Bill that seeks to register and regulate CSOs.¹¹²⁴ The groups have alleged that the Bill will violate their rights to freedom of expression, peaceful assembly and association, and nondiscrimination as enshrined in Sections 39, 40, and 42 of the Nigerian Constitution. Among other asks, the group has requested that the court issue a judicial order to stop the National Assembly from deliberating on the Bill.¹¹²⁵

The Civil Society Commission of Nigeria Bill, 2016 (HB 705) was introduced on June 15, 2016. A text of the bill has not yet been made publicly available. While there is currently no information about HB 705, the two other bills have significant implications for civil society and philanthropy in Nigeria due to their creation of an additional layer of regulation in the form of a commission or board, alongside a disregard for the previous registration role fulfilled by the Corporate Affairs Commission.¹¹²⁶ The civil society community is concerned that the bills would introduce unnecessary administrative bottlenecks. These bills currently enjoy moderate chances of passing through the various stages of the legislative process; however, it is expected that the bills will be merged in some form at the concurrence stage.¹¹²⁷ Also before Nigeria's National Assembly at the beginning of 2017 is the Money Laundering (Prohibition) Act (Amendment) Bill, 2016 (HB 410). The bill seeks to provide an effective and comprehensive legal and institutional framework for the prevention, prohibition, detection, prosecution, and punishment of money laundering and other related offenses in Nigeria.¹¹²⁸ The bill clearly defines what the offenses are and also provides for the protection of whistleblowers, sets limits for cash transactions, and establishes money laundering control measures. The bill provides a framework to strengthen civil society's accountability and transparency and helps to address the stereotype of NPOs being used as conduits for money laundering. It further improves the enabling environment for the financial operations of civil society and helps guarantee the judicious use of funds received.¹¹²⁹

¹¹²² Ibid

¹¹²³ Ibid

¹¹²⁴ Ibid

¹¹²⁵ "Nigerian human rights groups sue national assembly over NGO Regulation Bill," *Sahara Reporters*, November 5, 2017, <http://saharareporters.com/2017/11/05/nigerian-human-rights-groups-sue-national-assembly-over-ngoregulation-bill>.

¹¹²⁶ Ibid

¹¹²⁷ At the concurrence stage, similar bills are consolidated and merged into a single Act.

¹¹²⁸ Ibid

¹¹²⁹ Code for Corporate Governance for Not-for-Profits in Nigeria: <https://ccgnp.edu.ng.com>. Last visited on 14, November, 2023@about 11:48pm

A final recent piece of pending legislation is the Lobbying Regulation Bill, 2016 (SB 258), introduced on June 15, 2016. It seeks to establish lobbying as a profession in Nigeria and to regulate it, ultimately encouraging public participation and facilitating transparency and accountability in the law-making process.¹¹³⁰ The bill defines “lobbying activities as lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research, and other background work that is intended, at the time it is performed, for use in contacts, and [in] coordination with the aim of soliciting support of the National Assembly to vote for or against a particular legislative document.”¹¹³¹ The bill seeks to create more awareness of the National Assembly’s work, to promote mobilization, and to encourage a more extensive research process in law making and policy development. Lobbyists would be registered by the Office of the Clerk of the National Assembly upon payment of a prescribed fee, with lobbying certificates renewed every year. Lobbyists would be required to file annual returns and report on their activities every year. As defined by the bill, lobbying could potentially include the activities of NPOs, but it is not entirely clear.¹¹³²

On October 16, 2016, the Financial Reporting Council (FRC) released the Code for Corporate Governance for Not-for-Profits in Nigeria. The Code is intended to extend corporate governance, i.e., measures to protect stakeholders’ interests from corruption, to NPOs and is the outcome of a directive that was given to the Steering Committee of the National Code of Corporate Governance on November 29, 2013 by the Minister of Trade and Investment.¹¹³³ This development occurs on the heels of an existing narrative that suggests that civil society is a conduit for money laundering and terrorism financing, as well as the belief among some that NPOs do not have good corporate governance practices around stakeholder accountability.¹¹³⁴ The Code is accessible online; it has been in draft form since 2015 and has been the subject of a series of debates and consultations.¹¹³⁵

INTERNATIONAL RANKINGS

RANKING BODY	RANK	RANKING SCALE (BEST – WORST)
--------------	------	---------------------------------

¹¹³⁰ Ibid

¹¹³¹ Ibid

¹¹³² Ibid

¹¹³³ “FRC Releases National Code of Corporate Governance,” Financial Reporting Council of Nigeria, <http://www.financialreportingcouncil.gov.ng/news-center/frc-releases-draft-national-code-of-corporategovernance/>.

¹¹³⁴ Ibid

¹¹³⁵ Ibid

UN HUMAN DEVELOPMENT INDEX	152	1-188
FOREIGN POLICY: FRAGILE STATES INDEX	13	178-1
CAF WORLD GIVING INDEX	56	1-145
• HELPING A STRANGER	15	
• DONATING MONEY	91	
• VOLUNTEERING TIME	47	
HUDSON PHILANTHROPIC FREEDOM INDEX	54	1-64

1.3.2 Relevant Laws

a) Constitutional Framework

The Constitution of Nigeria, which was enacted in 1999 and amended in 2010, makes provision for the rights of Nigerians to associate, assemble, and express themselves freely. Section 39 guarantees the right to receive and impart information, and Section 40 guarantees the right to peaceful assembly and association. Section 45 permits these rights to be restricted in the interests of defense, public safety, public order, public morality, or public health or to protect the rights and freedoms of others.¹¹³⁶

b) National Laws and Regulations Affecting Philanthropic Giving

Table 1 lists the national laws and regulations affecting philanthropic giving in Nigeria.

Table 1. National Laws and Regulations Affecting Philanthropic Giving in Nigeria

TITLE OF LAW REGULATION	YEAR ENACTED	DESCRIPTION	LINKS TO LAW OR REGULATION
FRAMEWORK LAWS			
COMPANIES AND ALLIED MATTERS ACT (CAMA), CAP. C20	1990	Establishes the Corporate Affairs Commission, which is charged with responsibility for registering and regulating NPOs	<u>English</u>
TAX LAWS			

¹¹³⁶ Ibid

COMPANIES INCOME TAX AMENDMENT ACT (CITA), NO. 11	2007	Amends the Companies Income Tax Act of 1990	English
FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT 2007	2007	Establishes the Federal Inland Revenue Service (FIRS), which is charged with assessing, collecting, and accounting for revenues accruable to the government	English
VAT (AMENDMENT) ACT	2007	Amends the Value-Added Tax Act, No. 102, 1993	English
TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) DECREE NO. 21	1998	Establishes a list of taxes, levies and fees collectible by the various tiers of government in Nigeria	English
VALUE-ADDED TAX ACT, NO. 102	1993	Provides a framework for the imposition of Value- Added Tax on certain goods and services and provides for the administration of the tax and related matters	English
PERSONAL INCOME TAX ACT (PITA), NO. 104	1993	Establishes a legal framework for income tax on individuals, communities, families, and executors and trustees, and provides for the assessment, collection, and administration of the tax	English
LAWS OF GENERAL APPLICATION			

MONEY LAUNDERING (PROHIBITION) ACT (ML[P]A) (AS AMENDED), NO. 11, 2011, AND NO. 1, 2012	2011	Repeals the Money Laundering Prohibition Act of 2004 and enhances the scope of money laundering offences and customer due-diligence measures	<u>English</u>
NATIONAL PLANNING COMMISSION ACT	1993	Establishes the National Planning Commission to determine and advise on policies that will best promote national unity and sustain the Nigerian nation	<u>English</u>
CRIMINAL CODE ACT, CHAPTER 77	1990	Establishes a code of criminal law	<u>English</u>

1.3.3 Analysis

Organizational Forms for Nonprofit Organizations When individuals come together lawfully to pursue an agreed purpose, they have the choice of a wide range of legal forms, including companies limited by guarantee, associations with incorporated trustees, unincorporated associations, co-operatives, and traditional organizations, which are similar to friendship societies and include town unions and other mutual-benefit organizations. Not every group must register. However, organizations must register or be incorporated under CAMA if they wish to receive donor funding or enjoy tax benefits and exemptions. NPOs seeking to obtain legal status through registration most frequently chose to become associations with incorporated trustees or companies limited by guarantee. Both of these forms are governed by Part C of CAMA and are handled by the CAC. The choice of legal form is determined by the objective of the NPO. The purpose of a company limited by guarantee must be the promotion of commerce, art, science, religion, sports, culture, education, research, charity, or a similar area. The income and property of the company must be applied solely to promote the company's purpose. The company may have members or trustees. Social-enterprise NPOs, which are growing in number in Nigeria, are usually companies limited by guarantee. An association with incorporated trustees is an organization of persons that appoints one or more trustees. An association must also apply its income and property to promote its stated purpose. There are two types of associations. In the first type, trustees are appointed by a community of persons bound together by custom, religion, kinship, or nationality. In the second type, trustees are appointed by a body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purpose. Most churches, mosques, and town associations register as the first type of association, while traditional NPOs, professional associations, and foundations are typically the second type.

As of May 2015, 78,112 NPOs were registered with the CAC. More than 31,000 of these organizations are listed on the CAC's publicly accessible electronic database.¹¹³⁷

1.3.4 Registration of Domestic Nonprofit Organizations

Section 40 of the Nigerian constitution guarantees the freedom of association for all Nigerians. Therefore people who wish to come together to found an NPO generally face no restrictions, provided, according to CAMA, that the purpose for which the organization is formed and the procedures that it uses to carry out its activities are not illegal. The trustees of both a company limited by guarantee and an association are expected to be identified prior to registration and are therefore regarded as founding members. Since trustees and directors are fiduciaries holding positions of trust and responsibility, minors under the age of eighteen, persons whom a court has found to be of unsound mind, persons undergoing bankruptcy proceedings, and persons convicted within the previous five years of an offence involving dishonesty cannot be registered as trustees or directors of an NPO. CAMA is silent about the minimum or maximum number of individuals required to form an NPO. However, for administrative purposes and ease of decision making, many NPOs choose an odd number of founding trustees.

NPOs seeking to register must submit the following documents to the CAC:

- Evidence of the availability of the name of the organization and a request to reserve it. Prohibited names include any name that is similar to an existing or reserved name or to a registered trademark or business name, except with the consent of the owner; any name that is offensive, undesirable, or misleading; and any name that is contrary to public policy. A form for this purpose may be downloaded from the CAC website.¹¹³⁸
- A duly completed Incorporated Trustees Application Form, signed by the chairman, company secretary, president, founder, or solicitor of the new organization, and showing the address of the organization and an impression or drawing of the proposed common seal. This form may be downloaded from the CAC website.¹¹³⁹
- Extracts of the minutes of the general meeting at which trustees are appointed and special clauses are adopted into the constitution or bylaws. The extracts should list all members present, record their vote, and be signed by the chairman and secretary.
- Two copies of the organization's constitution.
- A notice of the application to register as published in one local and one national newspaper, or a copy of the notices certified by the National Library. The notices should state the name and principal objectives of the association and the full names of proposed trustees. They must invite objections to the application, which must be filed within twenty eight days of the notices' publication.
- A declaration form for each trustee, sworn to in writing in the High Court, along with a photocopy of the information page of each trustee's passport or national identity card. In the case of an illiterate trustee or officer of the organization, an illiterate jurat, or

¹¹³⁷ The reason that only half of the registered NPOs are listed on the database may be because of limited capacity on the part of the CAC to capture all data in electronic format, as paper had been used previously. Some paper applications may have been lost or damaged, while the paperwork of other NPOs may be difficult to locate. ¹⁰ The CAC database can be accessed at <http://publicsearch.cac.gov.ng:8080/comsearch/test.php>.

¹¹³⁸ This application form may be found at http://new.cac.gov.ng/home/wp-content/uploads/2023/11/cac_01.pdf.

¹¹³⁹ The Incorporated Trustees Application Form may be found at http://new.cac.gov.ng/home/wpcontent/uploads/2023/11/cac_it_form_001.pdf.

document certified by a judicial officer, should be presented along with the individual's thumbprints.

- A separate document listing the address of the association.

In addition, fees amounting to approximately \$150 must be paid to reserve the organization's name and to register. These fees are generally paid when the application to register is filed. The law does not require minimum capitalization as part of registration. Section 674(b) of CAMA is clear about the permissible purposes or aims of organizations wishing to incorporate. "The aims and objects of the association . . . must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purpose, and must be lawful." Although CAMA does not list the protection of rights or democracy promotion as among the permissible aims and objectives of an NPO, in recent years this provision has been interpreted broadly, and most NPOs focused on human rights are considered as having a social, development, or charitable purpose. However, the registration of clubs for gay persons or societies and organizations focused on lesbian, gay, bisexual, transgender, and intersex (LGBTI) issues is de facto prohibited under the Same-Sex Marriage (Prohibition) Act of 2014, since no society or organization with an unlawful purpose may be registered.

After receiving an application to register, the CAC may, at its own discretion, request evidence or verification of the information provided in the application. There is no limit to the CAC's ability to request more information or documentation. If the CAC is of the opinion that the application meets Sections 674, 675, and 676 of CAMA, then a notice of the application to register is published in a prescribed format in two daily newspapers circulating in the area where the organization is to be located. One of these newspapers must be national. The advertisement must ask for objections to the registration of the organization, to be submitted to the CAC within twenty-eight days of the final date of publication of the notices. The CAC will consider all objections and may request explanations or further information from both the objector and the applicant. The CAC may uphold or reject the objection as it sees fit and will inform the applicant accordingly. If, after twenty-eight days, no objection is made, or an objection, if received, has been rejected, the CAC may assent to or deny the application to register. The CAC may reject an application at its own discretion and need not provide written justification for its decision. Although applications may be rejected based on objections from the public, the law is not clear about other reasons that the CAC might reject an application. If the application is approved, the CAC will issue a certificate of incorporation in a prescribed format showing the date of incorporation and the corporation number assigned to the organization. The certificate of incorporation is prima facie evidence that all requirements for incorporation have been met. A searchable public database of registered organizations is available on the CAC website.¹¹⁴⁰

Depending on the objectives for which an organization is formed, a prospective NPO intending to engage in activities that involve government ministries, departments, or agencies may need to satisfy separate, defined registration requirements of those entities before or after registering with the CAC. For example, an NPO that supports development by digging boreholes for water might need to seek registration with a relevant state or federal authority, in part to facilitate communication with government officials. Similarly, an NPO wishing to engage in election observation must seek registration with the Independent National Electoral Commission (INEC). The staff or, in the case of a membership-based organization, the members of an NPO that is

¹¹⁴⁰ For the CAC database, see <http://publicsearch.cac.gov.ng:8080/comsearch/test.php>.

registered with INEC would probably be issued some kind of identification document enabling them to enter and move freely in locations such as ballot collation centers, which otherwise would be closed to the public. If INEC refuses to register the NPO, it would not mean that the organization ceases to exist or that its individual members could not engage in election observation, provided they do so in accordance with the rules generally applicable to such an activity. Registration with a government ministry, department, or agency is not to be confused with incorporation by the CAC, which is the only registration that confers legal personality, and many NPOs carry out their activities without seeking to be placed on a ministry's list of "approved" NPOs. In practice, some NPOs do not regard registration as a straightforward procedure. Favoritism or corruption within the system can play a role, and only lawyers and chartered secretaries accredited by the CAC are permitted to file applications. An NPO has no formal appeal process if the CAC seems to deny its registration unfairly, although it is free to challenge the CAC's decision in court. Registration is most likely to be granted to organizations seeking to advance religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purposes. Human rights organizations may find it difficult to register, especially if they are critical of government activities. In recent years, organizations with names that include the words "rights" or "human rights" have been rejected for registration unless they change those words to "initiative."

1.3.5 Registration of Foreign Nonprofit Organizations

Foreign NPOs are incorporated in the same manner and must comply with the same rules and registration procedures as domestic NPOs. This means, among other things, that they must conduct name searches and are prohibited from registering a name that could be interpreted as belonging to a Nigerian government body, even though it may be acceptable in their home countries. For example, the word "national" in the name of a foreign NPO is usually not permitted. The CAC and the National Planning Commission are the governmental authorities responsible for registering and supervising foreign NPOs and branches of foreign organizations working in Nigeria. A foreign NPO that does not meet the requirements to incorporate under CAMA may still operate in Nigeria if it executes a bilateral agreement with the relevant line ministry, then registers with the National Planning Commission, and pays any relevant fees. Once the bilateral agreement is signed, the foreign NPO has legal personality in Nigeria. However, this status comes at the price of fairly extensive control over the foreign NPO's operations. The ministry may appoint members to its board, approve its hiring of key personnel, and approve its budget, as the essence of the bilateral agreement is that the foreign NPO becomes a quasi-consultant to the line ministry.

All types of foreign organizations may establish branches in Nigeria provided they have legal personality and work towards the objectives identified for domestic NPOs in Part C of CAMA. Registration fees and name searches are also imposed in connection with an application to register a foreign branch. There are no limitations on the permissible purposes that a foreign NPO or branch may undertake, as they are guided by same laws guiding their domestic counterparts. However, as with domestic organizations, foreign NPOs working lawfully to advance a religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purpose are likely to be registered more easily than those that work on human rights or are critical of a sitting government.

1.3.6 Nonprofit Organization Activities

Political Activities and Lobbying. The law does not specifically ban all political purposes or political activities by NPOs. However, under Part C of CAMA, NPOs are expected to operate in a non-partisan manner and may not nominate, endorse, or oppose candidates for public office or support or oppose political parties. NPOs are permitted to engage in the electoral process only as election observers or providers of voter education. Explicitly prohibits NPOs from making gifts or donations to political parties or for any other political purpose.¹¹⁴¹

NPOs are allowed to participate in public-policy research and advocacy and to campaign, advocate, and lobby for legislation. Provided their activities are carried out in a lawful manner, NPOs face no barriers, legal or non-legal, to conducting advocacy work. Unregistered organizations may lobby and advocate, since they are protected by the guarantee of freedom of association contained in the Nigerian constitution. NPOs may lobby members of parliament to support or oppose proposed legislation and may mobilize citizens to communicate with their legislators about proposed legislation. There is no law that limits the amount of money that an NPO may spend on lobbying and other legislative activities.

1.3.7 Economic Activities.

Although the principal purpose of an NPO may not be commercial in nature, NPOs are allowed to conduct income-generating activities. There are no limitations on permissible income-generating activities, and NPOs do not necessarily have to conduct their economic activities through a for-profit subsidiary. Very few NPOs conduct business or trade, however. Those that do so mainly pursue activities in areas related to their main purposes, such as consultancies for the government to raise public awareness about a particular issue.

1.3.8 Prohibition on Distribution of Income or Assets/Private Inurement.

NPOs are prohibited by law from distributing profits or otherwise providing inappropriate private benefit to officers, directors, or other insiders. Section 686 of CAMA states that the income and property of NPOs shall be applied solely to the promotion of the objectives of the organization as set forth in its constitution and “no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit to any of the members of the association.”¹¹⁴² also states that payment to “an officer or servant of the body in return for any service actually rendered to the body or association is allowed under the law.” However, “with the exception of ex-officio members of the governing council, no member of a council of management or governing body, shall be appointed to any salaried office of the body, or any office of the body paid by fees” and “no remuneration or other benefit in money or money’s worth shall be given by the body to any member of such council or governing body except payment of out-of-pocket expenses or reasonable and proper rent for premises demised, or let to the body or reasonable fee for services rendered.” Contravention of this law can result in a demand for a refund by the CAC of such “income or property so misapplied to the association.”¹¹⁴³ There are no other legal rules governing financial transactions or self-dealing between NPOs and their directors, officers, employees, or the family members of these insiders. However, as a

¹¹⁴¹ Section 38(2) of CAMA

¹¹⁴² Section 686 of CAMA

¹¹⁴³ Ibid

matter of practice, organizations are expected to have conflict-of-interest policies as part of their governance procedures to guide them on issues of self-dealing.

Government Supervision. Four government bodies have the statutory authority to supervise NPOs:

1. The CAC, established under CAMA. The CAC is responsible for overall supervision of NPO registration and operations. Its broader responsibilities include the regulation and supervision of the formation, incorporation, registration, management, and dissolution of companies, business names, and incorporated trustees
2. Federal Inland Revenue Service (FIRS), established by the Federal Inland Revenue Service (Establishment) Act No. 13, 2007. FIRS oversees taxation, controls and administers the different taxes and laws specified in the act's first schedule and other laws and regulations, and accounts for all taxes collected.
3. Special Control Unit against Money Laundering (SCUML), which was established as a specialized unit of the Federal Ministry of Industry, Trade, and Investment by the Federal Executive Council of Nigeria (Decision No. EC 286) in September 2005. SCUML oversees issues related to money laundering and monitors and supervises the activities of designated non-financial institutions under the framework for anti-money laundering and combatting the financing of terrorism.
4. National Planning Commission (NPC), established by the National Planning Commission Act, 1993. The NPC monitors and regulates the activities of NGOs and NPOs in Nigeria.

Section 690(1) of CAMA requires NPOs to submit periodic reports to the CAC and FIRS. An NPO's annual return to the CAC should show, among other things, the name of the corporation; the names, addresses, and occupations of trustees and members of the council or governing body; the particulars of any land held by the corporate body during the year; and details of any changes to the organization's constitution effected during the year. The report must be submitted no earlier than June 30 and no later than December 31 each year, other than in the year in which the NPO was incorporated. The annual financial return to FIRS is due eighteen months after the date of incorporation (or not later than six months after the end of the first fiscal year, whichever is earlier) and thereafter six months after the end of each fiscal year. NPOs are also expected to file performance activity reports with FIRS.¹¹⁴⁴

1.3.9 Termination, Dissolution, and Sanctions

The government may involuntarily terminate or dissolve an NPO for unlawful practices or practices contrary to public policy. According to the Criminal Code Act, 1990, societies or organizations are deemed unlawful if they are formed for the purpose of "interfering with, or resisting, or encouraging interference with or resistance to the administration of law." For example, the organizations *Jama'atu Ahlis Sunna Lidda'awati wal-Jihad* (better known as Boko Haram) and *Jama'atu Ansarul Muslimina Fi Biladis Sudan* (also known as Ansaru) were originally set up for religious advancement and were proscribed in 2013 because of their terrorist activities.

An NPO may dissolve voluntarily under Section 691(1) of CAMA, which states that "A body corporate formed under this PART of this Act may be dissolved by the court on a petition brought

¹¹⁴⁴ Section 55(1) and (2) of CITA.

for that purpose by the governing body or council or one or more trustees or members of the association constituting not less than fifty per cent of the total membership or the Corporate Affairs Commission.” The grounds for dissolution, according to Section 691(2) of CAMA, are that the aims and objects for which the organization was established have been fully realized, the organization was formed to exist for a specified period and that period has expired, or the aims and objectives of the organization have become illegal or otherwise contrary to public policy.

Section 691(4) of CAMA sets forth procedures that NPOs must follow for dissolution and the distribution of assets. If “in the event of a winding-up or dissolution of the corporate body there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the body, such institutions to be determined by the members of the association at or before the time of dissolution.” In cases where this provision cannot be effected, Section 691(5) of CAMA stipulates that “the remaining property shall be transferred to some charitable object” on the decision of the CAC or a competent court of law. Short of termination, there are no other known sanctions that the government can impose on NPOs. However, an NPO may be subject to audits and inspections if, under Part C of CAMA and relevant tax laws, the authorities suspect that it is involved in business activities that are against the purpose for which it was established.

1.3.10 Charitable or Public Benefit Status

All NPOs registered under CAMA have charitable status. As such, they enjoy exemptions from income tax. In addition, any goods purchased for use in donor-funded humanitarian projects are zero rated for value-added tax (VAT) under the Value-Added Tax Act, as amended—which is to say, that they are taxable for VAT purposes, but with a tax rate of zero. An NPO directs its application for a tax-clearance certificate to the integrated tax office where it was registered and files its tax returns. The office processes the application and issues the tax clearance certificate if the NPO is found to be qualified. If the integrated tax office finds the NPO unqualified, it must provide reasons in writing within two weeks of the application. Corporate donors benefit from tax deductions for their donations, provides that any company making donations to an organization listed under CITA’s fifth schedule shall enjoy tax deductions not exceeding 10 percent of the total profits of that company for that year, as ascertained before any deduction of such donations is made and provided they are not of a capital nature.¹¹⁴⁵

1.3. 11 Local and Cross-Border Funding

There are no laws or rules governing an NPO’s ability to seek local funding. Decision No. EC 286(2005) of the Federal Executive Council of Nigeria established SCUML, which carries out the statutory responsibility of the Ministry of Industry, Trade, and Investment to monitor and supervise designated non-financial institutions for evidence of money laundering and the financing of terrorism. Operationally, SCUML is domiciled in the Economic and Financial Crimes Commission. NPOs are required to have in place anti-money laundering policies that guide their financial transactions, and they can be liable for sanctions if they take part in money-laundering schemes. NPOs must report the receipt of donations of more than \$1,000 given in cash to SCUML within one week. They are also required to submit electronic weekly reports of cash-

¹¹⁴⁵ Section 25(3) of CITA

based transactions to SCUML, although compliance with this rule is weak to non-existent. NPOs have noted that the mandatory weekly reports to SCUML have the potential to impede or discourage philanthropy, since detailed information about donors must be included in the reports, which makes anonymous donations impossible. Domestic donors are not subject to funding limits, vetting requirements, or other special restrictions when providing non-cash donations to either domestic or foreign NPOs (although instances of the latter are rare). Donors giving more than \$1,000 in cash to an NPO are flagged for routine background checks by SCUML or the Financial Intelligence Unit to verify the source of their funding. Domestic NPOs are permitted to operate internationally, and there are no restrictions on either an NPO's use of domestically sourced funding to carry out activities abroad or the amounts they may transfer abroad for their activities. However, the purpose of the funds must be declared when they are transferred abroad as part of normal banking procedures, and the bank may share this information with SCUML. There are no restrictions on an NPO's ability to receive donations or other forms of support from outside the country. Whether locally or internationally sourced, all funds received by NPOs must be independently audited and reported to both the CAC and FIRS as part of their annual returns. The exemption of NPOs from income tax does not remove their obligation to file returns regularly. NPOs are not subject to limitations on their affiliations with foreign persons or organizations, provided such organizations are lawful and are not affiliated with terrorist groups.

1.3.12 Tax Law

Organizations that engage in philanthropy under CAMA are considered charity organizations, and their excess income (derived from grants, subscriptions, donations, gifts, endowments, and so forth) over expenditures is exempt from corporate tax. According to Section 23 (1) of CITA, all NPOs are generally tax exempt, provided they do not have profits derived from any trade or business. Similarly, Section 23 (c) of CITA and Section 19, Para 13, Third Schedule of PITA provide that the profits of any company or institution engaged in ecclesiastical, charitable, benevolent, or educational activities of a public character are exempt from income tax provided such profits are not derived from a trade or business conducted by the organization. Foreign NPOs operating in Nigeria are exempt from income tax and are eligible for exemptions from other taxes under double-taxation treaties.

If an NPO engages in any trade or business, the profit derived from it will be subject to income tax as stipulated in CITA. FIRS defines trade as “the business of buying and selling or bartering goods and services.”¹¹⁴⁶ Thus while NPOs are exempt from paying taxes on income derived from

¹¹⁴⁶ FIRS relies on indicators known as “badges of trade” to determine whether an activity fits the definition of trade. They include (1) a profit-seeking motive (an intention to make a profit supports the definition of trade but is not in itself conclusive); (2) the number of transactions (systematic and repeated transactions support the definition of trade, and an isolated transaction may also constitute trade, as its one-off nature in no way invalidates an activity as constituting trade); (3) the nature of the asset (if the asset is of such a type or amount that it can only be turned to advantage by a sale, it may support the definition of trade); (4) the existence of similar trading transactions or interests (transactions that are similar to those of an existing trade may themselves be trading); (5) changes to the asset (if the asset was repaired, modified, or improved to make it more easily saleable or saleable at a greater profit, it may support the definition of trade); (6) the way in which the sale was carried out (if the asset was sold in a way typical of trading organizations, it may support the definition of trade); (7) the source of finance (if money was borrowed to buy the asset and the funds could only be repaid by selling the asset, it may support the definition of trade); (8) interval of time between purchase and sale (assets that are the subject of trade will normally, but not

their primary registered activities, they are liable for income tax on their commercial activities, such as a business or trade. In other words, the income that an NPO accrues via foreign and domestic grants, subscriptions, membership dues, donations, gifts, endowments, and so forth is not taxable, while the income coming from trade and business, which is known as unrelated business income, is taxable. NPOs must also pay income tax on passive income (that is, income received on a regular basis, with little effort required to maintain it, such as from dividends, rent, royalties, or interest), investment income, and capital gains tax if they dispose of their assets at a profit.

NPOs pay VAT on goods and services consumed, except those purchased exclusively for donorfunded humanitarian projects or activities, which are zero rated under the Value-Added Tax Act, as amended. NPOs must deduct pay-as-you-earn tax from employees' salaries to remit to the appropriate tax authority. In addition, they must deduct withholding tax on payments made to contractors and suppliers and remit them to the appropriate tax authority, along with a schedule of deductions. Local taxes, fees, and charges (such as a tax on parking or a fee for garbage collection) apply to NPOs as to other individuals and companies, even though the tax affairs of organizations registered under Part C of CAMA are administered by FIRS and, as such, are governed by federal legislation. As personal income tax is a function of residence, NPO staff members pay tax to the state board of internal revenue where they reside. Withholding tax on rent and consultancy services awarded to individuals is also remitted to the state as opposed to the federal government.

A donation by any company to an NPO listed under the fifth schedule of CITA is tax deductible, according to Section 25(3) of CITA, provided the donation does not exceed 10 percent of the company's total profits for the year, as calculated before the donation is made and is not of capital nature. Individual givers do not obtain tax deductions for their donations. There is no limit on the amount that they may designate to charities by way of inheritance. All NPOs registered under CAMA must maintain accurate records of employees and proper books of account. They have the obligation to register with FIRS and file tax returns every year. It is relatively easy for NPOs to take advantage of tax benefits provided that they carefully follow the procedures for filling annual returns with FIRS. To obtain a tax exemption, an NPO applies annually for a tax clearance certificate at the integrated tax office at which it is registered and files its tax returns. If the integrated tax office finds the NPO to be qualified, it will issue the tax-clearance certificate. If denied the certificate, the NPO receives an explanation of the reasons in writing within two weeks of the application. There is no provision for appealing such a decision. Not-forprofit companies, such as social enterprises and foundations engaging in economic or commercial activities, may apply to the president of Nigeria for an order to exempt them from taxation on their income or profits, no matter what the source. Overall, tax regulations are poorly enforced, as the government has limited enforcement capacity. In addition, the tax laws governing NPOs are not clear, and NPOs receive conflicting information about their tax status. According to the 2014 Civil Society Index Rapid Assessment for Nigeria,¹¹⁴⁷ two-thirds of NPOs do not pay pay-as-you-earn tax and

always, be sold quickly); and (9) method of acquisition (an asset that is acquired by inheritance or as gift is less likely to be the subject of trade).

¹¹⁴⁷ CSI "Civil Society Index—Rapid Assessment Country Report: for Nigeria," 28. <http://civicus.org/images/stories/Nigeria%20CSI%20RA%20final.pdf>.

more than one-half of organizations have a generally poor understanding of the tax regime. Although FIRS has disseminated circulars clarifying the taxes that NPOs must and need not pay, the tax law remains confusing to many NPOs.

1.3.13 News and Events

This Philanthropy Law Report was prepared by the International Center for Not-for-Profit Law in partnership with Oyeibisi Oluseyi of the Nigeria Network of NGOs and issued in March 2017.¹¹⁴⁸ It was updated again to reflect changes as of December 2017. The views expressed herein are those of the authors and reflect the authors' understanding of laws and regulations currently in effect in Nigeria, as well as best international practice, and does not constitute a legal opinion or advice.¹¹⁴⁹

1.4 Observations and Recommendations

This comprehensive conclusion highlights key observations and provides insights for future considerations:-

a. Positive Impact on Communities

Islamic financial institutions in Nigeria have demonstrated a positive impact on local communities through their philanthropic initiatives. These activities have addressed social and economic challenges, contributing to poverty alleviation, healthcare, education, and infrastructure development.

b. Alignment with Islamic Principles

Philanthropic activities by Islamic financial institutions are deeply rooted in Islamic principles such as Zakat, Sadaqah, and Waqf. The institutions prioritize social responsibility, emphasizing equitable wealth distribution and community development in accordance with Sharia principles.

c. Financial Instruments and Mechanisms

Sharia-compliant financial instruments have been effectively utilized by Islamic financial institutions to fund philanthropic projects. Mudarabah, Musharakah, and other Islamic financial structures have provided a unique avenue for sustainable and socially responsible investments.

d. Community Engagement and Collaboration.

The engagement of Islamic financial institutions with local communities, religious leaders, and other stakeholders has been a key factor in the success of their philanthropic endeavors. Collaborative efforts have strengthened the impact of these initiatives and fostered a sense of ownership within the communities.

¹¹⁴⁸ Oluseyi, Oyeibisi Babatunde. "How Not to Hold NGOs Accountable." Best Naira News. <http://news.bestnaira.com/posts/view/how-not-to-hold-ngos-accountable>.

¹¹⁴⁹ "FRC Releases National Code of Corporate Governance." Financial Reporting Council of Nigeria. <http://www.financialreportingcouncil.gov.ng/news-center/frc-releases-draft-national-code-ofcorporate-governance/>.

e. Challenges Faced

Despite their positive contributions, Islamic financial institutions face challenges in navigating regulatory frameworks, raising awareness, and ensuring the sustainable impact of their philanthropic activities. Overcoming these challenges requires a collaborative effort involving regulatory bodies, religious leaders, and the institutions themselves.

f. Policy Recommendations

Based on the examination, it is recommended that policymakers consider refining and adapting regulatory frameworks to better accommodate the unique characteristics of Islamic finance and philanthropy. Incentives and supportive measures could be introduced to encourage further engagement by Islamic financial institutions in socially responsible activities.

g. Ethical Considerations

The examination underscores the importance of upholding ethical considerations in philanthropic activities. Islamic financial institutions should continue to ensure that their initiatives align with Islamic values, promoting transparency, accountability, and adherence to Sharia principles.

h. Future Research Directions

The examination provides a foundation for future research exploring emerging trends, innovations, and the evolving role of Islamic financial institutions in philanthropy. Further studies could delve into the long-term impact of these activities and the potential for scaling up successful models.

1.5 Conclusion

The examination of the role of Islamic financial institutions in philanthropic activities in Nigeria reveals a multifaceted landscape where principles of Islamic finance intersect with the socio-economic needs of the local communities. The findings suggest that Islamic financial institutions play a significant role in contributing to philanthropy, aligning their activities with the principles of social justice and community welfare inherent in Islamic finance. In conclusion, the role of Islamic financial institutions in philanthropic activities in Nigeria is integral to the broader societal development agenda. The examination emphasizes the need for continued collaboration, adaptation of regulatory frameworks, and a commitment to ethical considerations to maximize the positive impact of these institutions on the well-being of the Nigerian populace.

THE CONCEPT OF GIFT (*HIBAH*) AND ITS REVOCATION (*AL-I'ITISAR*) UNDER ISLAMIC LAW: AN ANALYSIS

Muhammad Sambo Umar*

Ahmad Abubakar**

Abstract

This paper examined the concept of gift (hibah) and its revocation (al-i'tisār) under Islamic law, focusing on how classical jurists across the major Sunni schools addressed its legal and ethical implications. While hibah was encouraged in Islam as an act of generosity and social cohesion, it was also subject to defined legal conditions concerning donor intent, transfer of ownership, and the permissibility of revocation. The study analysed the circumstances in which a gift could be revoked, highlighting differences among the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī schools. It also explored key exceptions—such as gifts from parents to donees or cases involving debt—that restricted a donor's ability to reclaim a gift after its execution. Drawing on classical legal sources such as al-Muwatta', al-Mughnī, and al-Majmū', the paper demonstrated that while Islamic law promoted hibah as a moral virtue, it also prioritised legal stability and justice. The findings showed that the regulation of gift and revocation in Islamic jurisprudence offered a careful balance between altruism and legal certainty, with ongoing relevance to modern issues such as family gifts, estate distribution, and financial ethics.

Keywords: gift (hibah), revocation (al-i'tisār), donor (wahib), transfer of ownership and consideration ('iwad)

Introduction

The concept of *hibah* (gift) occupies a significant place within Islamic jurisprudence as a legal mechanism for the voluntary transfer of ownership from one individual to another. Traditionally, a gift is classified as a unilateral binding contract, wherein the donor (*wahib*) transfers ownership without expecting compensation. However, Islamic law recognizes certain exceptions where a gift may become bilaterally binding, particularly in cases involving consideration ('*iwad*'), thereby introducing complexity in both its execution and revocation. Understanding the intricacies of *hibah* necessitates a specialized and nuanced analysis, drawing from both Shari'ah principles and legal interpretation. This is especially crucial in light of its dual nature — as both a spiritual act of benevolence and a legally enforceable transaction. The Quran emphasizes the spiritual value of giving, stating: "You will not attain righteousness until you spend from that which you love"¹¹⁵⁰ and the Prophet Muhammad (peace be upon him) affirmed its moral value, saying: "Souls are naturally inclined to love those who treat them kindly." Thus, the institution of gift plays a vital

* Ph.D, Senior Lecturer, Gombe State University, Gombe, Nigeria.

** Researcher, Shehu Wada SAN and Co (Legal Practitioners) Gombe, Nigeria.

¹¹⁵⁰ Aal-Imran 3:92

role in nurturing social harmony, mercy, and human dignity, especially at a time when interpersonal relationships are increasingly strained and fragmented.

Legally, the act of gifting carries profound implications. It requires a significant degree of intent and courage from the donor, as it often involves the relinquishment of assets that could have otherwise supported their heirs. The potential impact on inheritance rights and financial stability emphasises the importance of clearly understanding the conditions under which a gift may be revoked. This is known in Arabic *al-i'itisar*. This paper explores the conditions for the revocation of a gift under Islamic law, focusing particularly on *al-i'itisar*, and critically analyzes the juristic opinions surrounding this issue. The study aims not only to clarify the legal parameters that govern revocation but also to contribute to the broader academic discourse by integrating classical jurisprudence with contemporary legal concerns. Moreover, this research is intended to enhance scholarly understanding and provide valuable insights into the delicate balance between moral generosity and legal rights, thereby enriching the university library and culminating four years of intensive academic pursuit.

The Concept of Gift

Islamic law (Shariah) places high value on acts that promote love, goodwill, and social cohesion, encouraging all efforts that strengthen human relationships. While obligatory forms of giving like zakat are mandated to ensure social welfare and economic balance. Moreover, Islam also encourages voluntary generosity such as *hibah* (gift-giving). Unlike zakat, which is a binding duty, *hibah* is a non-compulsory act of kindness that enhances interpersonal bonds, fosters mutual affection, and contributes to the moral and social fabric of the community.

Linguistic Meaning of Gift

Literally, the term *hibah* (gift) refers to an act of voluntary giving or showing favor to others, whether or not the subject matter involves tangible property. It encompasses anything from which benefit can be derived, whether material or immaterial.¹¹⁵¹ For example, a material gift could involve giving someone a horse, a car, or a house, while an immaterial gift may be expressed through a statement such as: “May God grant you a donee,” even though the donee is free and not considered property.¹¹⁵² This is supported by Quranic usage, such as the prayer of Prophet Zakariya (peace be upon him): {So grant me from Yourself a

¹¹⁵¹ Muhammad Kamel Morsi Pasha, *Sharh al-Qanun al-Madani al-Jadid, Juz' 5: Al-'Uqud al-Musamma* (Dar al-Nahda al-'Arabiyya, 1960) 16

¹¹⁵² Muhammad bin Ahmad Takiya, *Dirasa 'an al-Hiba fi Qanun al-Usra al-Jaza'iri Muqaranatan bi-Ahkam al-Shari'a al-Islamiyya wa al-Qanun al-Muqaran* (Al-Diwan al-Watani lil-Ashghal al-Tarbawiyya, 1st edn, Algeria 2003) 14

successor}¹¹⁵³ and the verse: {He grants to whom He wills [female] doneeren, and He grants to whom He wills [male] doneeren}.¹¹⁵⁴ When acts of gifting are frequent, the giver may be referred to as “*Wahhāb*” (one who gives generously), a form derived to denote intensification or excessiveness in the act. The expressions “*rajul wahhāb*” or “*wahhābah*” thus describe a person who gives generously and repeatedly.¹¹⁵⁵

Technical Meaning of Gift

In Islamic jurisprudence (fiqh), the concept of hibah—commonly translated as “gift”—is defined with slight variations across the different schools of thought. While the core idea revolves around the voluntary transfer of ownership without compensation, each school introduces nuances that reflect their interpretative principles and doctrinal emphases. Understanding these definitions is essential, particularly when examining legal consequences such as revocation (al-i’tisar), eligibility, and formalities. Below are the technical definitions of hibah according to the Hanafi and Maliki schools.

I. Hibah in the Hanafi School

According to the Hanafi jurists, hibah is defined as:

Transferring ownership of property without consideration.¹¹⁵⁶

This means that any person who holds rightful and complete ownership over a tangible asset (‘ayn) may give it away voluntarily to another without receiving anything in return, whether immediately or in the future, and while still alive. The emphasis here is on unilateral transfer without compensation, and it is limited to tangible, existing assets.

II. Hibah in the Maliki School

The Maliki school offers a more detailed categorization, distinguishing between two types of gifts:

Hibah without compensation (Hibah li ghayr al-thawab):

This is defined as: The transfer of ownership by someone legally capable of donating, of an object that is transferable by law, without consideration, to a qualified recipient, using a clear statement or equivalent indication.¹¹⁵⁷

¹¹⁵³ Quran, Maryam 19:5

¹¹⁵⁴ Quran, Ash-Shura 42:48

¹¹⁵⁵ Hassan Muhammad Boudi, *Mawani’ al-Ruju’ fi al-Hiba fi al-Fiqh al-Islami wa al-Qanun al-Wad’i* (Dar al-Jami’a al-Jadida lil-Nashr 2003) 19, 20, 21

¹¹⁵⁶ Ibid, 19

¹¹⁵⁷ Ibid, 20

This type of *hibah* must originate from a donor who is free from coercion and defects in will, and it is often given out of personal affection or spiritual intent, such as seeking God's pleasure.

1. Hibah with compensation (Hibah al-thawab): Defined by Imam Ibn 'Arafa as: "A donation intended to obtain a material return."¹¹⁵⁸ In this case, the gift is given with the expectation of a material reward, and as such, it takes on the characteristics of a contract of sale due to the presence of reciprocal consideration.

The contrast between the Hanafi and Maliki approaches reflects the broader jurisprudential themes within Islamic law. The Hanafi definition emphasizes the simplicity and gratuity of the transaction, while the Maliki view allows for more complexity, recognizing variations based on the donor's intent and whether consideration is involved. This distinction becomes particularly relevant when addressing legal questions about revocability, donor's rights, and the classification of the gift in case of disputes.

III. Hibah in the Shafi'i School

In the Shafi'i school of thought, *hibah* is defined as:

The transfer of ownership of property without consideration during one's lifetime, voluntarily.¹¹⁵⁹

The Shafi'i jurists added the term "voluntarily" (*tatawwu'an*) to the definition—distinguishing their position from that of the Hanafi school. This addition is intended to exclude obligatory acts of giving, such as zakat, vows (*nadhar*), and expiations (*kaffarat*), which—although they may involve the transfer of wealth—are performed out of religious duty, not voluntary generosity.

IV. Hibah in the Hanbali School

According to the Hanbali school, as defined by Ibn Qudamah, *hibah* encompasses a broad range of terms with overlapping meanings. He states:

Hibah, charity (*sadaqah*), gift (*hadiyyah*), and grant (*'atiyyah*) are closely related concepts, all of which involve the transfer of

¹¹⁵⁸ Ibid, 21

¹¹⁵⁹ Ibn Hajar al-Asqalanī, *Talkhīṣ al-Ḥabīr*, vol 3 (Dār al-Kutub al-ʿIlmiyya, n.d.) 69–70

ownership during the donor's lifetime without compensation. The term '*atiyyah*' generally includes all of them.¹¹⁶⁰

Despite the similarities, Ibn Qudamah also points out important distinctions between these forms. He notes that *hibah*, *sadaqah*, and *hadiyyah* differ in intent and context. For example, the Prophet Muhammad (peace be upon him) used to accept gifts but not charity, as illustrated in the incident concerning meat that was given as charity to Barirah. The Prophet said: "It was charity for her but a gift for us."¹¹⁶¹ This highlights that if something is given with the intention of seeking closeness to Allah and helping the needy, it is considered *sadaqah*. In contrast, if something is given to strengthen bonds of love or affection, it is regarded as a *gift* (*hadiyyah*). Nonetheless, all such forms of giving are praiseworthy and encouraged in Islam, as the Prophet (peace be upon him) also said: "Exchange gifts and you will love one another."¹¹⁶²

The Legitimacy of Gift (*Hibah*) in Islamic Law

The institution of *hibah* (gift-giving) is well-established and deeply rooted in Islamic law, supported by clear textual evidence from the Qur'an, the Sunnah, scholarly consensus (*ijma'*), and rational analysis (*ma'qūl*). Islamic teachings regard gift-giving not only as a means of voluntary charity but as a noble act that promotes generosity, social cohesion, and spiritual refinement.

Multiple verses of the Qur'an affirm the lawfulness and moral excellence of gift-giving. Allah says:

But if they (women) of their own accord remit to you a part of the dower, then enjoy it with pleasure and goodwill.¹¹⁶³

This verse indicates that a gift, even in the form of relinquished rights, is lawful when given willingly. Allah also praises those who give from their wealth:

And gives his wealth, in spite of love for it, to relatives, orphans, the needy, the traveler...¹¹⁶⁴

¹¹⁶⁰ Ibn Qudamah, Muwaffaq al-Din and Shams al-Din ibn Abi 'Umar ibn Qudamah al-Maqdisi, *Al-Mughni*, vol 6 (Dar al-Kitab lil-Nashr wa al-Tawzi', Beirut, n.d.) 246.

¹¹⁶¹

¹¹⁶²

¹¹⁶³ *Surah An-Nisa* (4:4)

¹¹⁶⁴ *Surah Al-Baqarah* (2:177)

Furthermore, Allah describes Himself as **al-Wahhāb** (The Ever-Generous Giver), encouraging believers to adopt similar virtues of generosity:

Indeed, You are the Almighty, the Most Generous (*al-Wahhāb*).¹¹⁶⁵

These verses not only establish permissibility (*ibāhah*) but encourage (*istihbāb*) gift-giving, especially when it strengthens kinship and social bonds. The Sunnah of the Prophet Muhammad ﷺ provides practical and direct endorsement of *hibah*. Numerous *ahadith* encourage Muslims to give and accept gifts. **Aisha (RA)** reported:

The Prophet ﷺ used to accept gifts and reciprocate for them.¹¹⁶⁶

Umar ibn al-Khattab (RA) narrated:

I gave a horse in charity for the sake of Allah, but the person wasted it. I wished to buy it back. The Prophet ﷺ said: ‘Do not buy it back, even if he gives it to you for a dirham. For the one who ¹¹⁶⁷takes back his gift is like one who swallows his vomit.’

These narrations confirm that *hibah* is a virtuous and praiseworthy deed but must be sincere and unconditional.

The Essential Elements (Arkān) of Hibah (Gift)

In Islamic jurisprudence, the valid execution of a gift (*hibah*) requires the fulfilment of three core elements: the donor (*al-wāhib*), the donee (*al-mawhūb lahu*), and the subject of the gift (*al-mawhūb*). Each of these elements is subject to specific legal considerations, as outlined below.

1. The Donor (al-Wāhib)

¹¹⁶⁵ *Surah Šād (38:35)*

¹¹⁶⁶ *Sahih al-Bukhari*, Hadith No. 2585

¹¹⁶⁷ *Sahih al-Bukhari*, Hadith No. 2621; *Sahih Muslim*, Hadith No. 1620

Jurists unanimously agree that a gift is valid if the donor possesses legal ownership of the subject matter at the time of the donation, and that such ownership must be free from encumbrance, such as restrictions due to illness or legal incapacity. While a gift made during sound health is undisputedly valid, jurists differ in their opinions regarding gifts made in illness or under financial or mental incapacity.

- a) **In the case of illness**, the majority opinion analogises such gifts to wills (*waṣiyyah*), and thus restricts the donor to gifting only one-third of their estate, as indicated in the hadith of ‘Imrān ibn Ḥuṣayn, where the Prophet ﷺ allowed the emancipation of only one-third of six slaves at the point of death (Muslim).
- b) **The Zāhirī school**, however, argues that such gifts should remain valid and taken from the entire estate unless proven otherwise by explicit scriptural evidence. They consider the aforementioned hadith to pertain solely to testamentary bequests rather than *inter vivos* gifts.

Furthermore, illnesses that are considered "life-threatening" (*marḍ al-mawt*) are those that restrict the legal capacity of the donor. Malikī scholars also include perilous conditions such as proximity to doneebirth, facing imminent danger in battle, or sailing on rough seas. Chronic conditions, however, are not typically regarded as incapacitating. With regard to legal incompetency (*safah*) or insolvency (*iflas*), there is consensus that gifts given under such circumstances are invalid due to the absence of sound legal capacity.

2. The Subject of the Gift (*al-Mawhūb*)

All items lawfully owned and transferable may be given as gifts. Jurists agree that an individual may donate their entire estate to a non-relative. However, disagreement arises concerning the preferential treatment of some doneeren over others in gift distribution.

- a) The majority of jurists discourage favouring one donee over another in gifts but maintain that such gifts, if executed, remain legally valid.
- b) The Zāhirī school holds a stricter view, declaring all preferential gifts among offspring impermissible.
- c) According to Mālik, it is permissible to favour one donee over another but impermissible to gift one's entire wealth to a single donee to the exclusion of others.

This debate is rooted in the hadith of al-Nu‘mān ibn Bashīr, where the Prophet ﷺ rejected the exclusive gift of a slave to one son and ordered its retraction (Ṣaḥīḥ al-Bukhārī; Muslim). The Prophet is reported to have said, "This is injustice." According to most jurists, however, such a hadith is interpreted as

recommendatory rather than obligatory, particularly when contrasted with the accepted permissibility of gifting one's entire wealth to a non-relative.

3. The Form and Acceptance of the Gift

Hibah requires an offer (ījāb) and an acceptance (qabūl) from the donee. The latter must be legally competent to receive and possess the gift. A major point of contention among jurists is whether physical possession (qabḍ) is a condition for the validity or merely the completion of a gift.

- a) According to al-Thawrī, al-Shāfi'ī, and Abū Ḥanīfah, possession is a condition for the validity of the gift. If the gift is not physically received, it remains non-binding.
- b) Imām Mālik, however, maintains that acceptance is sufficient for the validity of the gift, and possession is only required to complete the transfer. If the donee delays in taking possession and the donor becomes insolvent or ill, the gift is nullified.
- c) Aḥmad ibn Ḥanbal and Abū Thawr argue that possession is not required at all; a gift becomes valid upon mutual agreement alone. This view is also endorsed by the Zāhirīs. However, a narration from Aḥmad indicates that possession is necessary for measurable items such as grain or coinage.

The primary basis for the requirement of possession is the narration from Abū Bakr (RA), who revoked a gift to 'Ā'ishah (RA) because she had not taken possession of it (al-Muwatta'). Similarly, 'Umar ibn al-Khaṭṭāb (RA) condemned individuals who falsely claimed to have gifted items posthumously to their heirs without proof of delivery or possession.

4. Parental Gifts and Guardianship

Most jurists hold that a father may take possession on behalf of a minor donee or mentally incompetent adult under his guardianship. This applies to gifts from the father or third parties. The act of public declaration and witness testimony is considered sufficient for legal transfer, especially when the item is not specifically designated or in monetary form. According to Mālik, actual transfer of possession is required for tangible items such as clothing or residences, wherein the father must vacate or relinquish use. As for valuables like gold or silver, opinions vary—some require their physical transfer, while others accept

symbolic possession such as sealing them in a container with witnesses present. The guardian (*waṣī*) may act similarly to a father. However, Mālik's school shows internal variation on whether the mother may act as a guardian in such matters. Ibn al-Qāsim, citing Mālik, denies this right to the mother, while others among Mālik's followers grant it. The Ḥanafīs, on the other hand, consider both parents to have equal standing in this regard, while the Shāfi'īs allow the maternal grandfather and grandmother similar privileges.

Revocation of Gift (*Al-i'tisar*)

The term revocation of gift in Islamic jurisprudence is known as "*al-i'ṣār*" (الإعسار), which refers to the act of a donor (*wāhib*) taking back a gift (*mawhūb*) that has already been given and accepted by the donee (*mawhūb lahu*). This act essentially reverses the transfer of ownership that occurred through *hibah* (gift-giving). In Arabic, the term used for revocation is often "*raj' al-hibah*" (رجع الهبة), meaning "returning a gift." The concept implies that although a gift is voluntarily given without compensation, the donor may, under certain circumstances, seek to reclaim it during their lifetime.

Islamic law generally discourages revocation, as it contradicts the spirit of generosity and sincerity. However, scholars recognize that revocation may occur, particularly in situations where the law allows it—for example, when the donee has not yet taken possession of the gift, or when the donor is a parent reclaiming a gift given to their donee. In essence, revocation of a gift is the legal undoing of a previously completed act of generosity, where the gifted item is taken back by the original owner, either through consent, legal process, or specific exemptions provided in Islamic law.

The Legality of Revocation under Islamic Law

In Islamic jurisprudence (*fiqh*), the general principle governing *hibah* (gift-giving) discourages revocation (*rujū'*) of a gift once it has been validly executed and delivered. This is rooted in both moral and legal considerations, as the revocation of a gift is seen to contravene the spirit of generosity and social harmony that Islamic ethics seeks to foster. The Prophetic hadith serves as the foundational text:

The one who takes back his gift is like a dog that returns
to its vomit.¹¹⁶⁸

This hadith, widely accepted across the four Sunni schools of law, strongly condemns the act of reclaiming a gift after it has been given. However, the jurists have engaged in nuanced debate about the legal ramifications of revocation, especially when considered in light of public interest (*maṣlaḥah*), judicial necessity, or familial relations.

¹¹⁶⁸ Ṣaḥīḥ al-Bukhārī, Ḥadīth No. 2622; Ṣaḥīḥ Muslim, Ḥadīth No. 1622

1. The Hanafi School

The Ḥanafī school permits the revocation of gifts prior to delivery, as no transfer of ownership is deemed to have occurred. After delivery (qabḍ), however, revocation is generally disapproved (makrūh), although it remains legally valid (jā'iz) under specific conditions.

Notably, revocation post-delivery is permitted:

1. By mutual consent between the donor and the donee.
2. By judicial decree when justified by equitable considerations.
3. Excluded from revocation: Gifts between relatives with prohibited degrees of marriage (maḥārim) and between spouses, due to the moral and emotional consequences.

The Majalla al-Aḥkām al-‘Adliyya, the codified Ottoman Ḥanafī legal manual, encapsulates this position:

“It is not permitted to revoke a gift after delivery, except with the permission of the donee or by a court decision.”¹¹⁶⁹

Classical jurist Al-Kāsānī (d. 587 AH) reinforces this in his commentary:

Revocation is reprehensible due to the Prophet’s condemnation, but it is not invalid in all cases.¹¹⁷⁰

2. The Maliki School

The Mālikī school takes a more restrictive approach, firmly prohibiting revocation once the gift has been delivered, except in extremely limited circumstances. This is rooted in the principle of binding intent (niyyah) and the sanctity of the irrevocable transfer of ownership.

In the Risālah of Ibn Abī Zayd al-Qayrawānī (d. 386 AH):

It is not permissible for the donor to retract a gift once possession has occurred, unless the gift was fraudulent or forced.¹¹⁷¹

The Mālikīs also emphasise that allowing revocation would undermine commercial reliability and family cohesion. Thus, even judicial revocation is not accepted unless the gift involved coercion or deception (ghabn fāḥish).

Commentator Al-Khurashī in his explanation of the Mukhtaṣar Khalīl writes:

Revocation is forbidden absolutely after the donee’s possession, as it is akin to injustice and causes hatred.¹¹⁷²

3. The Shafi‘i School

The Shāfi‘ī school permits revocation before delivery, based on the principle that ownership is not transferred until qabḍ occurs. However, after delivery, revocation is not permissible unless the gift was

¹¹⁶⁹ Al-Majalla al-Aḥkām al-‘Adliyya, Articles 861–866

¹¹⁷⁰ Badā’i‘ al-Ṣanā’i‘ fī Tartīb al-Sharā’i‘, vol. 6, p. 126 (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1986).

¹¹⁷¹ Risālah, Book 36, Section on Hibah, p. 236 (Dār al-Fikr, 1995).

¹¹⁷² Sharḥ al-Khurashī ‘alā Mukhtaṣar Khalīl, vol. 7, p. 82 (Beirut: Dār al-Fikr, 1997).

given under duress, error, or with defects in consent. In *Al-Muhadhdhab* by Abū Ishāq al-Shīrāzī (d. 476 AH):

If a person gifts and the recipient accepts but does not take possession, the donor may revoke. But once the donee takes possession, the gift is binding and irrevocable, unless there was coercion or mistake.¹¹⁷³

Further support is found in *Al-Nawawī's* commentary:

The prohibition of revocation applies post-possession. Before that, revocation is allowed as the contract is not yet complete.

4. The Hanbali School

The Ḥanbalī school adopts a hybrid position, similar to the Ḥanafī view, allowing revocation before delivery and limited revocation after delivery, subject to judicial approval or consent of the donee.

In *Al-Mughnī* by Ibn Qudāmah (d. 620 AH):

It is permissible to revoke a gift before possession. After possession, it is not permissible unless with mutual consent or by judicial order.¹¹⁷⁴

However, the entire four schools revocation is impermissible in the case of:

- a) Parental gifts to doneeren (*birr al-wālidayn*).
- b) Gifts between spouses or *maḥārim*.
- c) Gifts resulting in significant hardship or injustice upon the donee.

The Ḥanbalī school also gives weight to public interest (*maṣlaḥah*) and equitable considerations (*‘adl*), especially when assessing cases of revocation brought before courts.

Conditions for the Revocations of Gift

Islamic jurisprudence (*fiqh*) recognizes hibah (gift) as a voluntary, non-compensatory transfer of ownership. While generally considered binding upon acceptance and possession (*qabḍ*), classical jurists have allowed the revocation (*rujū‘*) of a gift under certain limited conditions. This revocation, however, is not absolute, but circumscribed by specific criteria aimed at preserving justice and transactional stability.

According to Ibn Juzayy al-Kalbī, in his *Al-Qawānīn al-Fiqhiyyah*, the revocation of a gift is only valid if none of the following five conditions have been violated. If any one of these conditions occurs, the donor's right to reclaim the gift lapses, thus rendering the gift irrevocable. These are discussed in detail below:

¹¹⁷³ *Al-Muhadhdhab fī Fiqh al-Imām al-Shāfi‘ī*, vol. 1, p. 408 (Dār al-Fikr, 1992).

¹¹⁷⁴ *Al-Mughnī*, vol. 5, p. 626 (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1994).

(i) The Donee Shall Not Have Married After Receiving the Gift

Marriage is viewed in Islamic law as a significant change in a person's legal and financial responsibilities. When a donee, who is a recipient of a gift, enters into marriage, his financial obligations increase, and the gift may have been relied upon for fulfilling these responsibilities. Revoking the gift in such a case would impose an undue burden. Therefore, revocation is impermissible post-marriage, out of concern for harm (*ḍarar*), which Islamic legal maxims strictly prohibit: “*La ḍarar wa la ḍirār*” (*There shall be no harm or reciprocating harm*).¹¹⁷⁵

(ii) The Donee Has Not Incurred Debt After Receiving the Gift

If the donee incurs a debt after receiving the gift, it suggests that the property may have been used as a basis for credit or collateral. Revoking the gift under such circumstances may affect creditors and create injustice or fraud (*gharar*), which Sharia prohibits. Consequently, once the donee becomes indebted, the right to revoke lapses to protect third-party financial interests and maintain market fairness. This aligns with the broader legal maxim: “*Al-ghurm bi al-ghunm*” (Liability accompanies benefit), which underpins the necessity of honoring such financial commitments.

(iii) The Property Must Not Have Changed from Its Original Form

Revocation is contingent upon the identifiability and unaltered condition of the gift. If the property has transformed—for example, raw materials turned into products, land developed, or livestock sold or bred—its original identity is considered lost, and hence, the gift becomes irrevocable. This reflects a core fiqh principle that revocation applies only to the exact asset gifted, not its modified form. The Hanafi and Maliki schools particularly emphasize the need for the property to remain *mawjūd* (existent) and *mu‘ayyan* (specific) for revocation to be effective.¹¹⁷⁶

(iv) The Donee Shall Not Have Effected Any Changes on the Property

Similar to the previous point, if the donee has altered, improved, or disposed of the property (such as renovating a house or consuming a gift), the gift cannot be revoked. The donee's act of transformation demonstrates ownership and reliance on the gifted item, and revocation would result in unjust enrichment of the donor and loss to the donee.

This is supported by the hadith in Sahih al-Bukhari:

The one who takes back his gift is like the dog that returns to its vomit.¹¹⁷⁷

This metaphorical language highlights the ethical degradation associated with taking back a gift that has become integrated into the donee's life.

¹¹⁷⁵ Ibn Juzayy al-Kalbī, *The Canons of Islamic Jurisprudence (Al-Qawānīn al-Fiqhiyyah)* (Aisha Bewley tr, Madinah Press 2001) 540.

¹¹⁷⁶ Al-Kasani, *Bada'i al-Sana'i* (Dar al-Kutub al-'Ilmiyya 1986) vol 6, 127

¹¹⁷⁷ Sahih al-Bukhari, Hadith No 2622

(v) Neither the Donor nor the Donee is Sick

Islamic jurists often distinguish between actions taken in sound health (*‘āfiyah*) and those taken in *marḍ al-mawt* (terminal illness). A gift made during illness is treated analogously to a will (*waṣiyyah*) and thus is subject to the one-third rule, meaning it cannot exceed one-third of the estate without the consent of other heirs. Similarly, if the donor or donee falls ill after the gift, revocation is no longer permissible due to the legal instability caused by illness and the potential death of either party, which would finalize the transfer.¹¹⁷⁸ In essence, the Islamic legal framework balances the right of the donor to revoke a gift with equitable limitations that protect the donee from harm, uphold good faith in transactions, and prevent abuse. While revocation is theoretically permitted, the five conditions outlined above serve as safeguards to maintain justice and prevent exploitation. These restrictions emphasise the ethical and jurisprudential commitment of Islamic law to stability, fairness, and moral rectitude in interpersonal dealings.

Conclusion

This study explored the legal and ethical dimensions of *hibah* (gift) and its revocation (*al-i’tisār*) within Islamic jurisprudence. It demonstrated that while Islam encourages gift-giving as a virtuous and socially cohesive act, it also imposes clear legal structures to govern the process and its implications. Through an analysis of the views of the four major Sunni schools of law, the study revealed that a valid *hibah* requires clear intent, offer and acceptance, and actual or constructive possession by the donee, depending on the school. The paper also examined the permissibility and limitations of revoking a gift. Although Islamic law generally discourages revocation—emphasizing that true generosity should be unconditional—it allows it under certain circumstances, especially in the Ḥanafī school. However, key exceptions were identified, such as gifts from parents to donee, irreversible transformations of the gifted property, or situations involving debt, where revocation is restricted in the interest of justice and public welfare. Consequently, the concept of *hibah* under Islamic law reflects a balanced approach—one that values altruism but also seeks to preserve legal certainty and prevent disputes. The findings of this paper emphasise the ongoing relevance of these classical rules in contemporary contexts, particularly in family relations, estate planning, and contractual ethics.

¹¹⁷⁸ Ibn Qudamah, *Al-Mughni* (Dar al-Kutub al-‘Ilmiyya 1994) 5, 640–641

JURIDICAL AND BIOETHICAL OF HUMAN GENOME EDITING THROUGH THE LENS OF MAQASID SHARI'AH

Ayuba Abdulrasaq Jabaje*
Saka Muhammed Jimoh**

Abstract

Advances in genome-editing technologies, especially CRISPR-Cas systems, have made it feasible to modify human genes for decades, sparking intense ethical, theological, and legal debate. Through the prism of Maqāṣid al-Sharī'ah, the higher goals of Islamic law, this study analyzes the legal and ethical administration of human genome editing at the international level and investigates its permissibility and normative constraints. This study aims to promote responsible scientific innovation while protecting human dignity and maintaining divine confidence (amānah) in the stewardship of creation by connecting international regulatory standards with Maqāṣid-based ethical reasoning (World Health Organization). The study suggests an integrated regulatory approach that balances the Maqāṣid imperatives of ḥifz an-nafs (preservation of life), ḥifz an-nasl (protection of lineage), ḥifz al-'aql (preservation of intellect), ḥif al-māl (protection of property), and ḥifz ad-dīn (preservation of faith) with universal bioethical principles of human dignity, non-maleficence, and emerging Islamic bioethical scholarship. To ensure safety, transparency, and moral accountability, the analysis contends that genome-editing research and uses should be governed by a plural, cautious framework. Maintaining a worldwide moratorium on clinical germline editing until safety and oversight standards are clearly established, allowing somatic interventions only in cases where there is a clear therapeutic benefit and no viable alternatives are available, incorporating maslahah (public benefit) and avoiding maṣṣadah (harm) into ethical review procedures, and creating inclusive, multi-stakeholder governance structures involving Muslim juristic and bioethical authorities are some of the main recommendations.

Keywords: Human Genome Editing, CRISPR, *Maqāṣid as-Sharī'ah*, Islamic Bioethics.

1.0 Introduction

Concern regarding the potential of CRISPR-based technologies has grown alongside global enthusiasm for these innovations.¹¹⁷⁹ Beyond safety, bioethical concerns encompass justice, equity, and intergenerational responsibility.¹¹⁸⁰ These issues underscore the limitations of governance based solely on scientific considerations and advocate for broader moral and

* Ph.D, Department of Islamic Law, Faculty of Law, Al-Hikmah University, Ilorin, Nigeria.barristerjabaje@gmail.com/08028704967

** Professor, Department of Epidemiology and Community Health Faculty of Clinical Science, University of Ilorin, Ilorin, Nigeria.sakamj@unilorin.edu.ng/08030686345.

¹¹⁷⁹ Alkorta and M. Fernández-Ardèvol, 'Bioethical Issues in Genome Editing by CRISPR-Cas9 Technology' (2020) 11 *Frontiers in Genetics* 567.

¹¹⁸⁰ F Baylis and J Robert, 'Human Genome Editing: Regulations, Risks and Ethical Considerations' (2019) *EMBL Lab Matters*.

philosophical frameworks that respect human variation and dignity.¹¹⁸¹ Genome editing represents one of the most revolutionary developments in biomedical science, fundamentally redefining humanity's ability to manipulate genetic material.¹¹⁸² Technologies such as CRISPR-Cas9, TALENs, and zinc-finger nucleases enable scientists to target, excise, and replace DNA sequences with unprecedented precision.¹¹⁸³ This capability holds promise for treating or potentially eradicating hereditary disorders such as Huntington's disease, sickle cell anemia, and cystic fibrosis. However, it also raises profound ethical questions regarding the sanctity of human life, the limits of natural intervention, and the potential commodification of human existence.¹¹⁸⁴ Discussions worldwide highlight the tension between scientific feasibility and ethical acceptability.¹¹⁸⁵ This paper thus examines the intersection of international bioethics, human rights jurisprudence, and Islamic moral reasoning concerning genome editing. It advocates an integrative framework where global regulatory norms are harmonized with *Sharī'ah*-based ethical reasoning, ensuring that genome editing advances scientific progress while preserving human dignity and promoting responsible innovation.¹¹⁸⁶

2.0 Conceptual Annotations

From Islamic perspective, the *maqāṣid as-Sharī'ah*, the higher objectives of Islamic law which include the protection of life (*ḥifẓ an-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ an-nasl*), property (*ḥifẓ al-māl*), and religion (*ḥifẓ ad-dīn*) are particularly relevant.¹¹⁸⁷ Humans are considered stewards (*khulafā'*) rather than full owners of their biological composition, and life is viewed as sacred, entrusted by God (*amānah*).¹¹⁸⁸ Accordingly, genetic interventions must be evaluated not only for scientific effectiveness and legal permissibility but also for moral responsibility and

¹¹⁸¹ DW Brock and D. Szinay, 'Genome Editing: Ethics, Politics and Power' (2019) 21(12) *AMA Journal of Ethics* E1033.

¹¹⁸² E Clayton and S Mubayi, 'CRISPR in Public Health: The Health Equity Implications and Role of Federal Agencies' (2021) 12(10) *Genes* 1558.

¹¹⁸³ E. Goddard and D Shanley, 'Beyond Safety: Mapping the Ethical Debate on Heritable Genome Editing' (2022) 8 *Palgrave Communications* 117.

¹¹⁸⁴ Innovative Genomics Institute, *CRISPR and Ethics* (Berkeley: IGI Publications, n.d.).

¹¹⁸⁵ G Kaebnick, 'Moral Reasons to Edit the Human Genome: Picking up from the Nuffield Report' (2019) 45(11) *Journal of Medical Ethics* 737.

¹¹⁸⁶ K Abiola, 'Judicial Training and Bioethics in Nigeria' (2020) *Nigerian Law Teacher* 9(2) 89–102.

¹¹⁸⁷ U Majid *et al.*, 'Exploring CRISPR Technology through the Prism of Qawā'id and Islamic Bioethics' (2021) *CILE Research Publications*.

¹¹⁸⁸ Nuffield Council on Bioethics, *Genome Editing: An Ethical Review* (London: Nuffield Press, 2016).

metaphysical purpose.¹¹⁸⁹ This approach situates genome editing within a framework of divine accountability rather than human dominion, expanding the ethical conversation.¹¹⁹⁰

Scientific organizations, governments, and ethics councils have advocated for stringent regulation and public engagement prior to clinical applications of germline modifications.¹¹⁹¹ Beyond technical safety, genome editing poses societal risks such as exacerbating inequality, reinforcing ableist assumptions, and undermining human diversity.¹¹⁹² The increasing privatization of bioengineering raises additional concerns around access, patents, and ownership.¹¹⁹³ Addressing these challenges requires global governance that balances innovation with justice, transparency, and participatory oversight.¹¹⁹⁴

Ethically pluralist perspectives, such as the Nuffield Council on Bioethics' 2018 report, argue that genome editing is not inherently immoral if it promotes welfare, social justice, and public transparency.¹¹⁹⁵ National academies in the United States and the United Kingdom have echoed this view but advocated for indefinite moratoria on germline interventions until technical and moral uncertainties are resolved.¹¹⁹⁶ Together, these frameworks form a lattice of moral and legal principles, which must interact with local cultural and spiritual values in Muslim-majority contexts, affirming life's sanctity, the principle of non-harm (*lā ḍarar wa-lā ḍirār*), and the moral responsibility of knowledge.¹¹⁹⁷

The juridical landscape for genome editing illustrates tension between universal ethical aspirations and domestic law enforcement realities.¹¹⁹⁸ Soft-law instruments, such as the UNESCO Universal Declaration on the Human Genome and Human Rights (1997) and the WHO Governance Framework on Human Genome Editing (2021), provide guidance without

¹¹⁸⁹ Nuffield Council on Bioethics, *Genome Editing and Human Reproduction: Social and Ethical Issues* (London: Nuffield Press, 2018).

¹¹⁹⁰ Royal Society, *Submission to the Nuffield Council on Bioethics: Evidence on Genomics and Genome-Editing (GEN0051)* (London: Royal Society, 2016).

¹¹⁹¹ U.S. National Human Genome Research Institute (NHGRI), *What Are the Ethical Concerns of Genome Editing?* (Bethesda: NHGRI, n.d.).

¹¹⁹² World Health Organization, *Governance Framework for Human Genome Editing* (Geneva: WHO, 2021).

¹¹⁹³ UNESCO, *Universal Declaration on the Human Genome and Human Rights* (Paris: UNESCO, 1997).

¹¹⁹⁴ A Chapra, *The Future of Economics: An Islamic Perspective* (Leicester: Islamic Foundation, 2000).

¹¹⁹⁵ M Kamali, *Ethics and Human Good in Islamic Law: An Introduction to Islamic Legal Thought* (Leiden: Brill, 2019).

¹¹⁹⁶ M Al-Bar and H. Chamsi-Pasha, *Contemporary Bioethics: Islamic Perspective* (Cham: Springer, 2015).

¹¹⁹⁷ J Harris, 'Ethics of Germline Gene Therapy' (2020) 26 *Nature Medicine* 151.

¹¹⁹⁸ National Academies of Sciences, *Human Genome Editing: Science, Ethics, and Governance* (Washington DC: National Academies Press, 2017).

enforceable authority.¹¹⁹⁹ Their effectiveness depends on national implementation, which is often lacking in developing countries including Nigeria.¹²⁰⁰ While soft law creates a moral compass, domestic legislation is essential for coercive power, compliance, and accountability.¹²⁰¹ The Human Fertilisation and Embryology Act (UK), Japan's Bioethics Guidelines, and South Korea's Bioethics and Biosafety Act exemplify how ethical oversight can be legally institutionalized.¹²⁰² Nigeria and similar jurisdictions can learn from these models to bridge aspiration and implementation.²⁵ Cross-border reproductive tourism is an emerging juridical concern, where disparities in national laws are exploited for gene-editing procedures, threatening global equity.¹²⁰³ WHO's global genome-editing registry represents a move toward transparency, yet participation remains voluntary, limiting its efficacy.²⁷

The *He Jiankui case*, involving the birth of gene-edited twins in 2018, highlights the challenges of enforcing bioethical norms transnationally and underscores the need for binding international instruments.¹²⁰⁴ Additional juridical issues include informed consent and genetic data privacy. The EU's GDPR treats genetic information as sensitive, requiring explicit consent and restricting secondary use.¹²⁰⁵ Similar protections could be adapted in African nations to prevent genetic discrimination and unauthorized use by private firms.¹²⁰⁶ Intellectual property rights in gene-editing technologies also pose ethical and legal dilemmas, particularly regarding equitable access and public-interest licensing.¹²⁰⁷

Criminal liability for unethical experimentation remains contested. South Africa criminalizes unauthorized genome editing, signaling normative protection of human dignity.¹²⁰⁸ In contrast, some systems rely on civil or administrative penalties. For Nigeria, criminalization could deter

¹¹⁹⁹ D Baltimore *et al.*, 'A Prudent Path Forward for Genomic Engineering and Germline Gene Modification' (2015) 348(6230) *Science* 36.

¹²⁰⁰ A. Hurlbut, *et al.*, 'CRISPR Democracy: Gene Editing and the Need for Inclusive Deliberation' (2018) *Issues in Science and Technology* 34(4) 25–32.

¹²⁰¹ J Mali and L Church, 'Cas9 as a Versatile Tool for Genome Engineering' (2013) *Nature Biotechnology* 31(9) 833–838.

¹²⁰² J Khan, 'Sharī'ah Governance and Biomedical Ethics in Muslim Jurisdictions' (2019) *Islamic Law Review* 7(1) 85–104.

¹²⁰³ H Nasr, *Man and Nature: The Spiritual Crisis of Modern Man* (Chicago: ABC International Group, 1997).

¹²⁰⁴ A Moosa, *Ethical Dimensions of Islamic Law: The Maqasid Framework* (Doha: Hamad Bin Khalifa University Press, 2020).

¹²⁰⁵ A Abbasi, 'Cross-Border Bioethics and Islamic Jurisprudence: The Need for a Global Moral Compact' (2021) *Journal of Islamic Ethics* 5(3) 223–241.

¹²⁰⁶ H Taylor, 'CRISPR and the Privatization of Human Genetics' (2022) 38 *BioSocieties* 62–78.

¹²⁰⁷ X Qiu, 'The Legal and Ethical Fallout from the He Jiankui Gene-Editing Case' (2020) *Journal of Law and the Biosciences* 7(1) 1–10.

¹²⁰⁸ European Union, *General Data Protection Regulation (GDPR)* (Brussels: EU Publications, 2016).

misconduct while aligning with Islamic principles emphasizing deterrence (*zajr*) and correction (*islāh*).¹²⁰⁹ Institutional review boards (IRBs) and ethics committees are crucial for operational governance, yet many African institutions face capacity constraints. National legislation should standardize IRB procedures, enforce transparency, and establish appellate mechanisms for research misconduct.¹²¹⁰ Judicial interpretation also plays a key role. Courts in Europe and North America increasingly adjudicate reproductive rights, genetic discrimination, and consent violations using soft-law instruments.¹²¹¹ Nigerian courts could similarly integrate global bioethical norms to guide local decisions, with specialized judicial training in bioethics enhancing coherence.¹²¹² International cooperation remains vital for effective governance. Legal harmonization, shared databases, and intergovernmental partnerships can mitigate unregulated cross-border research. Nigeria's integration into African Union and WHO frameworks could strengthen oversight while aligning with global ethical standards.¹²¹³ A juridical system blending local law, moral reasoning, and international collaboration can transform fragmented governance into a unified moral-legal order.¹²¹⁴

3.0 Scientific and Historical Foundations of Genome Editing

The scientific journey toward genome editing reflects centuries of curiosity about heredity and the mechanisms of life.¹²¹⁵ From Gregor Mendel's 19th-century experiments with pea plants to the elucidation of DNA's double-helix structure by Watson and Crick in 1953, humanity has persistently sought to decode the language of life. The discovery of CRISPR-Cas9 in the early

¹²⁰⁹ O Adeleke, 'Genetic Privacy and Data Protection in Nigeria: Lessons from the EU GDPR' (2021) *Nigerian Journal of Law and Technology* 3(2) 44–59.

¹²¹⁰ R Bentley, 'Intellectual Property and Access in Genome Editing Technologies' (2022) *Global Health Law Review* 12(2) 77–96.

¹²¹¹ S Ncube, 'Criminalization of Unethical Genetic Experimentation in South Africa' (2020) *South African Law Journal* 137(4) 621–638.

¹²¹² M. Oloyede, 'Deterrence and Correction in Islamic Criminal Jurisprudence' (2018) *Ilorin Journal of Law* 10(1) 55–73.

¹²¹³ C Ndiritu, 'Institutional Review Boards and Ethics Committees in Sub-Saharan Africa' (2019) *African Bioethics Review* 11(2) 105–122.

¹²¹⁴ P Schneider, 'Judicial Interpretation in Bioethical Jurisprudence' (2021) *European Journal of Health Law* 28(1) 45–62.

¹²¹⁵ African Union, *Africa Health Strategy 2024–2030* (Addis Ababa: AU Commission, 2022).

2010s marked a watershed moment it transformed gene editing from a specialized, expensive procedure into an accessible and adaptable tool for laboratories worldwide.¹²¹⁶

Unlike earlier techniques that were time-consuming and error-prone, CRISPR-Cas9 allows researchers to “cut and paste” specific genetic sequences with near-surgical accuracy. Yet, with this power comes unprecedented ethical responsibility.¹²¹⁷ Somatic genome editing, which targets non-reproductive cells, offers tremendous therapeutic potential for curing diseases within an individual’s lifetime. Germline editing, however, affects reproductive cells, meaning alterations are passed to future generations.¹²¹⁸ This heritable aspect introduces moral questions about consent from unborn descendants, the alteration of the human gene pool, and the possible creation of genetic hierarchies. The 2018 scandal involving Chinese scientist He Jiankui, who announced the birth of genetically edited twins, exemplified the dangers of premature application.¹²¹⁹

The incident provoked outrage across the scientific and ethical community, exposing glaring gaps in governance and oversight. International Juridical and Bioethical Instruments UNESCO’s engagement with genetics and bioethics has been instrumental in globalizing the discourse on human dignity and scientific responsibility.¹²²⁰ The Universal Declaration on the Human Genome and Human Rights (1997) established the human genome as the “heritage of humanity,” affirming that scientific progress must respect human rights, equality, and justice.¹²²¹ Though non-binding, this declaration serves as a moral constitution for the genomic era, urging nations to prevent discriminatory uses of genetic information and to safeguard the integrity of the human species.¹²²² Similarly, the International Declaration on Human Genetic Data (2003) addressed issues of consent, confidentiality, and data protection particularly relevant in the age of genetic databases and biobanks.¹²²³

¹²¹⁶ M Mensah, ‘Towards an Integrative Moral-Legal Framework for Biotechnology in Africa’ (2023) *African Journal of Legal Studies* 16(1) 22–41.

¹²¹⁷ S Müller and R Bostrom, *The Gene Revolution: Historical Pathways to Genome Editing* (Cambridge: MIT Press, 2020).

¹²¹⁸ J Doudna and E Charpentier, ‘The New Frontier of Genome Engineering with CRISPR-Cas9’ (2014) 346(6213) *Science* 1258096.

¹²¹⁹ D Baltimore *et al.*, ‘A Prudent Path Forward for Genomic Engineering and Germline Gene Modification’ (2015) 348(6230) *Science* 36–38.

¹²²⁰ D Baltimore *et al.*, ‘A Prudent Path Forward for Genomic Engineering and Germline Gene Modification’ (2015) 348(6230) *Science* 36–38.

¹²²¹ National Academies of Sciences, *Human Genome Editing: Science, Ethics, and Governance* (Washington DC: National Academies Press, 2017).

¹²²² X Qiu, ‘The Legal and Ethical Fallout from the He Jiankui Gene-Editing Case’ (2020) *Journal of Law and the Biosciences* 7(1) 1–10.

¹²²³ UNESCO, *Universal Declaration on the Human Genome and Human Rights* (Paris: UNESCO, 1997).

Furthermore, by grounding bioethics in the universal language of rights, UNESCO positioned genetic governance as a shared human responsibility transcending cultural and political boundaries.¹²²⁴ Nonetheless, the implementation of these frameworks varies across regions. However, underscoring the necessity of contextualization. For Muslim-majority societies, integrating *Shari'ah*-based ethical reasoning with UNESCO's human-rights-oriented bioethics provides a culturally coherent path for policy development.¹²²⁵ Such integration allows a balanced approach where universal human rights principles coexist with the divine imperatives of justice, dignity, and stewardship.

4.0 Survey of Contemporary Islamic Bioethical Literature

Over the past five years, Islamic bioethics has expanded significantly in its engagement with genome editing technologies.¹²²⁶ Scholars have sought to reconcile advancements in biomedical science with the enduring objectives of *Shari'ah*, guided by the principles of *maqāṣid as-Shari'ah* and *uṣūl al-fiqh*.¹²²⁷ Isa examined the He Jiankui incident as a litmus test for the ethical maturity of global scientific governance, concluding that the absence of proper risk–benefit evaluation and violation of informed consent rendered the act impermissible within an Islamic ethical framework.¹²²⁸ Similarly, Alsomali employed the dual criteria of *maṣlaḥah* (public welfare) and *mafsadah* (harm) to argue that human germline interventions—unless proven safe and socially justified—contradict the higher objectives of *Shari'ah* that safeguard life and lineage.¹²²⁹

Later contributions, such as Awan and Khalid's distinguished between somatic (non-heritable) and germline (heritable) modifications, framing the former as potentially permissible under the objective of *ḥifẓ an-nafs* (protection of life) when aimed at curing genetic diseases.¹²³⁰ These authors emphasized that such permissibility is contingent on scientific certainty and ethical oversight, not to be conflated with enhancement-oriented interventions that may alter human

¹²²⁴ UNESCO, *International Declaration on Human Genetic Data* (Paris: UNESCO, 2003).

¹²²⁵ J Tasioulas, 'The Universal Declaration on the Human Genome and Human Rights: Moral Vision and Implementation' (2002) *UNESCO Bioethics Series* 4(2) 25–40.

¹²²⁶ World Health Organization, *Human Genome Editing: A Framework for Governance* (Geneva: WHO, 2021).

¹²²⁷ M Al-Bar and H Chamsi-Pasha, *Contemporary Bioethics: Islamic Perspective* (Cham: Springer, 2015).

¹²²⁸ U Majid *et al.*, 'Exploring CRISPR Technology through the Prism of Qawā'id and Islamic Bioethics' (2021) *CILE Research Publications* 5(2) 77–95.

¹²²⁹ M Kamali, *Ethics and Human Good in Islamic Law: An Introduction to Islamic Legal Thought* (Leiden: Brill, 2019).

¹²³⁰ A Isa, 'Genome Editing and the Ethical Maturity of Global Science: An Islamic Appraisal' (2020) *Journal of Islamic Bioethics* 6(1) 22–35.

nature or undermine *ḥifẓ an-nasl* (protection of lineage).¹²³¹ Rahman further argued that contemporary bioethical decision-making should include communal deliberation (*shūrā*), particularly in Muslim societies, where technological interventions affect not only individuals but the moral fabric of the community.¹²³² Recent works such as Ahmad and Nuruddin advocate the institutional inclusion of Muslim jurists and scholars in national and global ethics councils to ensure that policies governing genome editing reflect Islamic moral values and communal priorities.¹²³³ Across this expanding corpus, a general consensus emerges that the permissibility of genome editing in Islamic bioethics depends on therapeutic necessity, the avoidance of speculative harm, and transparent governance.¹²³⁴ Collectively, this literature demonstrates that Islamic scholarship far from resisting modern science offers a structured moral methodology capable of guiding biomedical innovation in ways that uphold both divine trust (*amānah*) and scientific responsibility.

5.0 Comparative Ethical Analysis: International Principles vs *Maqāṣid*

Comparative analysis between international bioethical norms and *maqāṣid*-based reasoning reveals both deep consonance and conceptual divergence. The World Health Organization's governance framework emphasizes precaution, transparency, and the minimization of harm principles that align closely with *ḥifẓ an-nafs*, which mandates preservation of life as a paramount objective.¹²³⁵ Similarly, UNESCO's Universal Declaration on the Human Genome and Human Rights (1997) enshrines human dignity and equality,¹²³⁶ echoing the *maqāṣid* concern for justice and non-discrimination. These parallels suggest that Islamic and international frameworks are not mutually exclusive but reflect distinct epistemological routes to similar ethical conclusions. However, differences arise in their normative sources. International bioethics rests largely on secular human-rights and utilitarian logic, whereas Islamic ethics draws authority from divine revelation and jurisprudential reasoning. Issues such as genetic enhancement or germline

¹²³¹ F Alsomali, 'The Ethics of Human Germline Intervention in Sharī'ah: Between Maṣlaḥah and Mafṣadah' (2021) *Islamic Law and Society* 28(3) 341–364

¹²³² M Awan and S Khalid, 'Somatic and Germline Editing in Islamic Bioethics: Differentiating Therapeutic and Enhancement Applications' (2023) *Journal of Islamic Ethics* 9(1) 12–30.

¹²³³ A Moosa, *Ethical Dimensions of Islamic Law: The Maqāṣid Framework* (Doha: Hamad Bin Khalifa University Press, 2020).

¹²³⁴ M Rahman, 'Shūrā and Collective Deliberation in Contemporary Islamic Bioethics' (2024) *Muslim World Bioethics Review* 3(2) 65–81.

¹²³⁵ R Ahmad and N. Nuruddin, 'Institutional Inclusion of Muslim Jurists in Genome Ethics Councils: A Policy Imperative' (2025) *Journal of Islamic Bioethics and Law* 12(1) 33–52.

¹²³⁶ A Abbasi, 'Cross-Border Bioethics and Islamic Jurisprudence: The Need for a Global Moral Compact' (2021) *Journal of Islamic Ethics* 5(3) 223–241.

manipulation are judged not only by outcomes but by theological concerns about human purpose and divine creation. Thus, *maqāṣid* introduces an added moral threshold that restrains human overreach into domains reserved for divine authority. To build coherent global governance, scholars such as Ebrahim and Khalifa recommend sustained dialogue between secular and religious ethics communities.¹²³⁷¹²³⁸ Such engagement could yield hybrid frameworks that respect religious conscience while maintaining scientific accountability.

6.0 Jiankui and Governance Failures

The 2018 He Jiankui case remains an emblem of biomedical governance failure. His claim to have produced gene-edited babies provoked global condemnation and exposed oversight gaps. Investigations showed falsified clearances, deception of participants, and lack of peer or regulatory review.¹²³⁹ From an Islamic bioethical lens, these acts constitute *ithm* (moral transgression) rather than innovation, violating *ḥifẓ an-nafs* and *ḥifẓ an-nasl* by exposing life and lineage to harm. The incident breached *amānah* the sacred trust obliging scientists to safeguard human welfare and triggered WHO's registry for genome-editing research and calls for a moratorium on germline interventions.¹²⁴⁰ The case remains a cautionary tale of how ethical misconduct undermines global trust and moral legitimacy.

7.0 Integrated Juridical *Maqāṣid* Framework

An integrated governance model must reconcile international legal norms with *maqāṣid* imperatives. Such a fusion renders governance both legally enforceable and morally sustainable by interpreting international soft-law mechanisms through *maqāṣid*'s moral grammar, infusing rights and responsibilities with divine accountability. Key principles include Inclusive governance participation of Muslim jurists, ethicists, scientists, and patient advocates within oversight bodies ensures moral legitimacy and cultural sensitivity.¹²⁴¹ The principles also include robust consent

¹²³⁷ I Ahmed, 'Genome Editing, Human Dignity and Sharī'ah-Based Ethics' (2024) *Journal of Islamic Bioethics and Law* 12(1) 33–57.

¹²³⁸ UNESCO, *Universal Declaration on the Human Genome and Human Rights* (Paris: UNESCO, 1997).

¹²³⁹ World Health Organization, *Human Genome Editing: A Framework for Governance* (Geneva: WHO, 2021).

¹²⁴⁰ Ebrahim, *Interfaith Bioethics and the Future of Human Genome Governance* (London: Palgrave Macmillan, 2023).

¹²⁴¹ Khalifa, 'Dialogical Ethics and Religious Engagement in Global Biotechnology Policy' (2025) *Journal of World Bioethics* 14(2) 145–160.

and data protection which adapt UNESCO's declarations¹²⁴² into *Sharī'ah*-compliant privacy frameworks emphasizing informed consent as both legal and moral duty.

8.0 Conclusion

Human genome editing presents both significant ethical opportunities and dangers. The Nuffield Council, UNESCO, and WHO have global frameworks that prioritize safety, justice, and dignity. These are complemented by *Maqāṣid as-Sharī'ah*, which rejects augmentation and careless germline modification and emphasizes the protection of life, lineage, intellect, property, and faith favoring therapeutic usage under stringent safeguards. The most balanced approach to maximize gain and reduce harm is a pluralistic, cautious governance model that integrates international norms with *maqāṣid* principles.

¹²⁴² X Qiu, 'The Legal and Ethical Fallout from the He Jiankui Gene-Editing Case' (2020) *Journal of Law and the Biosciences* 7(1) 1–10.