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Editorial

We are pleased to present the first issue of the second volume of our **online** bi-annual Journal, **LexScriptio**, to the research community, policy makers and the world at large.

This issue contains writings on topical legal issues such as the rights available to the defendant in the Nigerian criminal justice system, rights and interests of a child in custody issues under Shariah law, misconceptions on Islamic banking system as it affects compliance with the applicable laws and solutions to combat insider threats in the aviation security system in Nigeria. Each article was blind peer-reviewed, plagiarism tested and included for publication only after thorough compliance with the reviewers' comments.

The Journal also contains pieces on Sukuk, workplace sexual harassment, testamentary freedom under Islamic law, IA as its affects legal education, death penalty laws in Nigeria, effect of the choice of marriage on succession, transnational human trafficking in West Africa, green financing for sustainable tourism, Islamic law and assisted reproductive technology, clogs on the implementation of African Continental Free Trade Area Agreement and African Trade, Elderly Consumer Protection in Nigeria, legal measures to reverse Nigeria's epileptic power supply, tax reform bill and the Nigeria Revenue Service, right to education of the girl child and practice of child marriage in northern Nigeria, implementing the AFCFTA Protocol on intellectual property in Nigeria, adverse possession in modern property law, legality of the National Health Insurance Scheme for Nigerian Muslims, impact of oil spills on food security. Our readers will surely find this array of impactful discussions worthwhile, appealing, and enriching.

Our sincere appreciation to all contributors from academia (both within and outside the Faculty), private and government sectors, practitioners and students, every member of the Department, the managing editor, associate editors, advisory board, editorial board, authors and the entire Faculty.

We hope you enjoy reading this issue of **LexScriptio** and look forward to publishing your articles, book reviews and case notes in our subsequent issues. Intending contributors should read about the journal for submission guidelines on the journal website; **https://kwasu.site/index.php/lexscriptio** and send to lexscriptio@kwasu.edu.ng. Please be informed that the publication date for the next issue is December 2025.

Dr. Khafayat Yetunde Olatinwo
Chief Editor
December 2024

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APPRAISAL OF THE PARAMOUNT INTEREST OF A CHILD AS PRECURSOR TO GRANT OF CUSTODY (الحضانة) OF A CHILD UNDER SHARI'AH

Abdulrazaak O. Zakariya*

Abstract

Custody (Hadana) in Islamic jurisprudence is primarily guided by principles derived from the Qur'an, Hadith, and juristic interpretations within the four major Sunni schools (Hanafi, Maliki, Shafi'i, and Hanbali), as well as Shia perspectives. In Islamic Family law, custody is usually granted to the mother; with whom it is believed the interest of the child would be best served, particularly during the child's early years, emphasizing maternal care's importance in nurturing. Islamic law balances the rights and duties of both parents while prioritizing the child's best interests, a principle known as maslahah (welfare of the child). Therefore, father basically assume financial responsibilities and legal guardianships, overseeing matters relating to the child's education, finances, and marriage arrangements. However, there are factors which may cause shift in custody ranging from such as the child's age, the custodian's ability to fulfill the child's obligations, and circumstances that might be deemed harmful to the child's well-being. It must be noted however that Nigeria has numerous ethnic groups and customary laws vary broadly. Also, contemporary applications of custody in Muslim-majority countries vary, as interpretations of Islamic principles may integrate state laws, societal customs, and modern child welfare considerations. This paper through a doctrinal method appraises the provisions for child custody (Hadana) under the Shari'ah as affecting the Muslims' children vis-à-vis how the interest of the children would be best served. The objective of this research is to sensitize many Muslim women who had little or no knowledge of their right to custody of their children. It was observed that though some Muslim women know their right to custody of their children but lack prerequisite power to fight for it when been overridden by men. Lastly, the paper concludes by making recommendations to Muslim women who may want to explore custody under Islamic law.

Keywords: Shari'ah, *Hadana*, Child, Custody, Paramount Interest

1.0 INTRODUCTION

Hadanah (الحضانة) is the Arabic term use for custody of a child in Islamic law.[2] The word is used to express the action of a mother-bird protecting its chicks with its wings. Thus, the word *Hadanah* is technically used to convey the general care and protection a mother gives to her young child under Islamic law.[3] *Al-Hadana* is one of child's rights that are incumbent on his parents or some set of people as laid down in the *Shari'ah*.[4] *Islam* considers the issue of children's rights very crucial, as children are the nucleus of a healthy society. This right of *Hadana* is due to a child before, after his birth. The reasons for this right are that; children are believed to be potentially weak, feeble, and prone to the negative effects of social vices and negative occurrences as well as harmful behaviors.[5]

2.0 MEANING OF *HADANA*

Literally, *Hadana* means 'to clasp in one's arm' 'to hug or embrace' 'to nurse' to bring up' 'to raise' a child.[6] *Al-Hadana* technically means the act of protecting, guarding and shielding of a child physically, spiritually and mentally at his tender age from hazards of life.[7] This protection is aiming toward helping the child to differentiate between good and bad, harm and benefit and generally to

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[2] JM Cowan (ed.) *Arabic-English Dictionary* (Junaid Offset Works, New Delhi, 1960) 185

[3] MA Ambali *The Practice of Muslim Family Law in Nigeria* (2nd ed. Tamaza Publishing Co. Ltd., Zaria, 2003) 256

[4] IM Bakr *Al Fiqh al– Wadih Minal–Kitab Was-Sunnah 'Alal–madhahibil –Arba'ah* (vol. II, 2nd ed. Daru al–Manar, Cairo, 1998) 159.

[5] Zakariya O. A. 'An Appraisal of Child's Right under the Islamic Law' (Being a long essay submitted to the faculty of law, university of Ilorin, Ilorin, Nigeria, in partial fulfillment of the requirements for the award of the degree of bachelor of laws (LL. B Hons.) In Common and Islamic Law, 2011) pg. 19

[6] Cowan J. M., (ed.) *Arabic-English Dictionary,* p.185, see also: *Muḥammad ibn Mukarram Ibn Manẓūr, Lisan Al-'Arab,* edited by Yusif Khaiyyatt and Nadean Mar'ashi, Vol. 1, Beirut. 661-662;

[7] Bakr (n 3)159.

be able to face the challenges of life when he becomes adult.[8] *Hadana* of a child includes: taking care of the child's personal hygiene like taking care of his body, his cloth, preparing his food, where he sleep.[9] *Hadana* also involves taking care of the child intellectually, (**عقليا**) spiritually, (**نفسيا**) and physically **(جسميا**).[10]

2.1 MEANING OF PARAMOUNT INTEREST OF CHILD UNDER SHARI'AH.

The paramount interest of child; also known as best interest or welfare of child are nursing, health, proper training and the child's education.[11] These are first thing to be considered in child custody under Islamic law.[12] Any determination of child custody must be done bearing the welfare of the children in mind and must be in the best interest of the child. Any discrimination in the granting of custody that does not align with the welfare and best interest of the child is invalid, unlawful and can be challenged in Court.[13] The welfare and best interests of the child are paramount, and various personal and situational aspects are evaluated to ensure that the custody arrangement serves the child's needs. The Sharia Court of Appeal of Kwara State held in Adebiyi v. Adebiyi[14] that:

> 'Mother's intense care, bedding and bodily warmth are better for him (the child) than the father's until he (the child) is of age and then choose for himself. Thus, the mother is more passionate, more tender, more compassionate, more subtle, more experienced (in child raising) and more pitiful. She is therefore more entitled to her child so long she has not remarried.'[15]

[8] Ibid.

[9] Abdulkadir Orire, 'Shari'a: A Misunderstood Legal System' (Sankore Educational Publishers Limited, Zaria, 2007). 81.

[10] Ambali (n 2) 256

[11] MA Ambali *The Practice of Muslim Family Law in Nigeria'* 326

[12] See the unreported case of Katsina State Sharia Court of Appeal, *Bilyamin Bashir* v. *Suwaiba Muhammad* Suit No. (KTS/SCA/KT/39/2019)

[13] Ibid. see also the decision of the Sharia Court of Appeal, Kwara State in Adebiyi v. Adebiyi (2020) KSCALR. P. 85 @ 92.

[14] (2020) KSCALR. P. 85 @ 92

[15] Ibid.

3.0 RIGHT OF *HADANA* IN ISLAM.

Intuitively, parents' hearts are disposed to loving children and are filled with psychological feelings and parental compassion for protecting, caring, sympathizing, and loving for the children.[16] *Hadana* is aimed at serving the paramount interest of a child hence the right of custody of a child belongs to the mother of such child either during the connubial relationship or after its dissolution.[17]

However, when such mother falls short of one of the prerequisites of right of *Hadana* as shall be discussed later in this paper, the *Hadana* shall be taken away from her to some other set of people.[18]

4.0 THE ORDER OF THOSE WHO HAVE THE RIGHT OF *HADANA*.

Muslim jurists gave preference as to who has the right to care for a child taking into consideration the interest of the child. Women are preferred over men and within the same gender, preference has been given to those who are closer to the child and who are expected to be more compassionate and merciful.[19]

[16] Nasih Ulwan A. 'Child Education in Islam' (Dar El Salam, Cairo, 1st, 2001). 15

[17] Bakr Ishmael M., *Al Fiqh al– Wadih Minal–Kitab Was-Sunnah "Alal–madhahibil –Arba"ah pg. 160.* The reason for giving priority to the mother is that she has proper right to custody and breast-feeding of the child. This is because she is more skillful and more capable to discharge the duty better than man and she is endowed with patience and time to attend to the problems of the child both of which she is more suitable than man in respect of custody. See for detail, As-Sayyid Sabiq *'Fiqh As-Sunnah'* (Vol. II, 4th ed., Daru Al-Fikr, Lebanon, 1983) pg. 287; see also the case of Taibatu Aduke V.G. A. Mustapha KWS/SCA/10/85, where the Kwara State Shariah Court of Appeal sitting in Ilorin granted to the appellant the custody of her children with the respondent.

[18] Ibid, 160

[19] Imam Al-Hussain '*Custody of Children in Shari'ah'* available online at http://www.irfi.org/articles/articles_551_600/custody_of_children_in_shari.htm(irfi)

4.1 ORDER OF WOMEN IN THE RIGHT *HADANA*The mother, (الأم).

Jurists unanimously agree that so as long as mother is qualified, she has priority over any other person to claim the *hadana* of her child.[20] This is evident on a *hadith* reported by *Abu Dawud* that '*Amru Ibn Shu'yb* narrated from his father, from his grandfather that:

> A woman came to the Prophet and said: 'O Messenger of Allah! I carried my son in my womb, suckled him my breasts and held him on my lap; yet his father has divorced me and wants to take him away from me. The Prophet replied: "You have more right to him as long as you do not re-marry.[21]

Caliph Abu Bakr (RTA), was also reported to have made a decision between Caliph 'Umar (RTA), and his wife when he divorced her and took away her son – 'Asim- from her, that the custody of the child be given to the mother. Abu Bakr said to Umar: 'the hug and kisses of that old woman to the child is more important and valuable than whatever material wealth you can offer the child.'[22]

Grandmothers (ام الأم ثمّ ام الأب). Except in *Malikiyyah* where the maternal aunt has preference over paternal grandmother, the majority of juristic school of thought are of the opinion that in the absence of the mother (whether dead or disqualified), the custody right goes to the grandmothers; however, maternal grandmother is given priority over the maternal grandmother. This was evident on the *athar* reported by Qasim bin Muhammad that:

> 'Umar Ibn Al-Khattab had married a woman from the Ansar. She gave birth to a son whose name was 'Asim bin 'Umar. 'Umar later divorced the woman. One day when 'Umar was proceeding on horseback towards Qa'ba, he found his son was playing in front of the mosque. He caught hold of him and placed him on the horse's back.

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[20] Al-Imam Muhammad bn Aliy Ash-Shawkani, *Comprehensive Islamic Jurisprudence According to the Qur'an and Authentic Sunnah*, (Trans. Abu Aisha Murthada Salahudeen al-Iwoowee, Edit. Muhammad Zubair Bin AbdulAzeez , Salmah bint Younus, 1st Ed., Dakwah Corner Bookstore, Malaysia, 2019) 399

[21] Abu Dawud, *'Sunanu Abi Dawud'* (1st Ed., Daru Ibn Hazm, Beirut, 1998) Hadith No. 2276, 351

[22] Abu Malik Kamal Bn As-Sayyid Salim, *Sahih Fiqh As-Sunnah Wa Adilatuh Watawdihi Madhahibil Ahimah,* (Vol. iii, Daru *Tawfiqiyyah lilturath*, Cairo, 2010) 371

> 'Asim's maternal grandmother caught up with them. A quarrel arose between the maternal grandmother and 'Umar about the *hadanah* of the boy. Both of them came to Abu Bakr who was the Caliph. 'Umar said: "He is my son". The grandmother said: "He is my son". Abu Bakr said: "Leave this woman and the child". 'Umar said nothing in reply [he raised no objection to this decision] [23]

Hierarchy of other women who are entitled to the *Hadana* of a child are as follows:

i. Sisters (**الأخت الشقيقة**)**:** maternal Full or half sister, then paternal Full or half sister. This is the preference of the *Hanafiyyah* and the *Shafihiyyah*. The *Malikiyyah* prefers maternal aunts over paternal grandmother and sisters.[24]

ii. Aunties **(الأت الأم ثمّ الأت الأب**): Maternal aunt is preferred by the *Malikiyyah* after mother and maternal grandmother.[25]

iii. Nieces **(بنت الأخت الشقيقة ثمّ بنت الأخت لأم**): maternal Nieces have priority over paternal maternal Nieces.[26]

The purport of the above list women is that is one is not available or fall short of any of the required conditions, the other (in order of their arrangement) takes over the *Hadana*. It must be said that mother of such child takes priority over all others except if she is wicked and/or guilty of immorality like frequently goes out for parties or picnics; if she lives as prostitute or marries someone not related to the child.[27] If none of the above-mentioned women is not available or available but unfit, then *Hadana* becomes right of one of the men in the following order.

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[23] Quoted in Abu Malik Kamal Bn As-Sayyid Salim, *Sahih Fiqh As-Sunnah Wa Adilatuh Watawdihi Madhahibil Ahimah,* 370

[24] Ibid. pg. 370

[25] Ibid.

[26] M. Bakr Ishmael, *Al Fiqh al– Wadih Minal–Kitab Was-Sunnah "Alal–madhahibil –Arba"ah. 160;* see also An-Nafrawiy Al-Malikiy, *'Al-Fawakihu Ad-Dawaniy 'ala Risalatu Ibn Abi Zayd Al-Qayrawaniy'* (Daru Al-Fikr, Bairut, 2008, Vol. II). 66-67

[27] Sharma. A. 'When Mother does not lose her Right of Custody under Muslim Law in India' available online at <http://www.preservearticles.com/2012030124304/when-mother-does-not-lose-her-right-of-custody-under-muslim-law-in-india.html> accessed on 26/2/2023

5.0 ORDER OF MEN IN RIGHT OF *HADANA*.

(i) The father, and then the grandfathers. (**الأبّ ثمّ ابّ الأبّ**)

(ii) The brothers and then their children (nephews) (**اللأخ الشقيق ثمّ ابن الأخ الأبّ**)

(iii) The uncles and then their children (cousins) (**العم الشقيق او عم أبيه الشقيق ثمّ ابنهما**)[28]

In the absence of all the above men, *Hadana* of a child shifts to the paternal side of his mother i.e. mother's father, mother's grandfather, mother's uncles, and then their sons.[29] However, in the absence of all the above listed people to take over the *Hadana*, then the authority or the judge shall appoint someone to take over the custody of the child,[30] this discretion shall be exercised with total consideration of physical, mental, emotional, religious, financial, or any other relevant factors, including a child's preference.[31]

6.0 SHARI'AH *HIKMAH* IN THE ORDER OF *HADANA* VIS-À-VIS PARAMOUNT INTEREST OF CHILD UNDER SHARI'AH

The caring nature, dedication, attention and tender feeling a woman has toward children generally is the reason for giving priority to the woman in a custody matter. Mother is believed to be more skillful and capable to discharge these duties better than man and that is reason mother is given priority over man in Islamic Law of custody.[32] This was further buttressed in an interesting case has been recorded by Imam Ash-Shawkani in his book *Nail al Awtar* which was brought before Ibn Taymiyya.[33] In this case, child custody was contested by both parents. Court gave the option to the child for choosing the custodian. He opted for the custody of the father. On it, the mother

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[28] Ibid.

[29] Ibid.

[30] Ibid.161

[31] A Hadjian *'**In matters of child custody, child support and spousal support, Islamic nations apply civil and Islamic legal traditions differently'*** **available on line at** <http://abbashadjian.com/2013/05/the-children-of-sharia/> accessed on 1 March 2023

[32] MA Ambali *The Practice of Muslim Family Law in Nigeria'* 326.

[33] Cited by Iqra Firdous & Shahnaz, 'Best Interest or Religious Laws: The Paramount while Deciding Child Custody in India' International Journal for Multidisciplinary Research (IJFMR) (6, Issue 3, May-June 2024) 6. Available online at https://www.ijfmr.com/papers/2024/3/21339.pdf accessed on 20th March, 2025.

asked the court to inquire from the child why he has preferred the father. On court's inquiry the child said, 'mother compels me to go to the school where the teacher punishes me every day while the father allows me to play with the children and do whatever I like.' On hearing this, the court gave the custody to the mother.[34] This clearly shows that welfare and best interests of the child are paramount hence, wishes of the minor while deciding his or her custody has always been subject to the principle of best interest and welfare of the minor is best served even in classical Muslim legal tradition. This is why various personal and situational aspects must be evaluated to ensure that the custody arrangement serves the child's needs in the award of custody under Shari'ah.

7.0 SHARI'AH PREREQUISITES FOR *HADANA*.

Certain conditions to be met are laid down to qualify for the *Hadana* of a child. The conditions are as follows:

- Sanity **(العقل)**. An insane person is not entitled to be awarded custody of a child since he/she also need someone to care for him/her.
- Adult (**البلوغ**) an underage person needs someone to take care of him/her either hence not qualifies to be awarded custody of a child.
- Competence/Capability **(قادرة)**, someone who is entitled to *Hadana* must be competent and capable of serving and taking care of the child. Such a person must also have a prerequisite knowledge of how to train a child.
- Person of good character. A person who is to take charge of *Hadana* must be of good character. An insolent or a prostitute woman cannot be given custody of a child.
- Being a Muslim. Some jurists opine that *Hadana* cannot be awarded to an unbeliever with reference to surah An-Nisah:[35] **وَلَن يَجْعَلَ اللَّهُ لِلْكَـٰفِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلاً** '…And never will Allah grant to the disbelievers a way (to triumph) over the believers'.[36] This is also aimed at protecting the faith and religion of such child. It is possible that the woman trains the child on her own religion different from Islam and which may be difficult for the child to change

34 Ibid.

35 Q. 4: 141

36 Yusuf 'Ali A. '*The Meaning of the Holy Qur'an'* (amana Publications Maryland, USA, New ed., 1998)

after the *Hadana*.[37] Nonetheless, the *Hanafiyya, Ibn Qasim* (a *Malikiyyah*) and Abu *Thawr* opine that *Hadana* of a child should be given to his/her mother regardless of her religion[38] in as much as *Hadana* only entails nursing, breast-feeding, and caring for a child.[39]

- Lastly, that the mother of the child who wants to assume custody has not been married /to another man who is a stranger (i.e., not being related to the child).[40] This is evident on the hadith narrated by '*Amru Ibn Shu'yb* earlier quoted in this paper.

It must be added also that a divorced mother or any others who assume custody of a child is not allowed to travel outside the town far from where the child's father lives except she will return same day, although she may do so with the permission of such father.[41] However, a mother taking custody of her child may travel and/stay in her hometown being a place where she was married after her *iddah* (waiting period) without necessarily seeking the permission of the child's father (her ex-husband). Permission of the father should be sought if she is travelling to a town not being hers or being her town but not being the place where she was married, or being a town where she was married but not being her hometown.[42]

7.0 SHARI'AH *FIQH* OF DURATION OF *HADANA*.

The duration of *Hadana* for a male child extends till when he attains puberty (**البلوغ**).[43] While that of a female child is till when she got married and her marriage is consummated.[44] Some Hanafi jurists opine that custody of a male child ends when he attains the age of 7years while that of a female child end when she attains the age of 9years.[45] In Kuwait, the girl remains in the care of

[37] Bakr Ishmael M., *Al Fiqh al– Wadih Minal–Kitab Was-Sunnah "Alal–madhahibil –Arba"ah pg. 161*

[38] Except such a woman is an apostate, then she shall not be given custody of her child.

[39] Ibid. pg. 162

[40] Al-Jazairiy A. *'Minhaj Al-Muslim'* (Daru Al-Fikr, Beirut, 2002) pg. 361.

[41] Bakr Ishmael M., *Al Fiqh al– Wadih Minal–Kitab Was-Sunnah "Alal–madhahibil –Arba"ah pg. 163-164*

[42] *Ibid*. p. 164.

[43] Puberty is attained by a child his/her sex glands become functional and the secondary sexual characteristics emerge. The sign of puberty in a male adolescent is known by his potency to impregnate a woman and the discharge of semen, while a female child's puberty is known by her menstruation, nocturnal pollution and pregnancy. See generally, Anwarullah, '*The Criminal Law of Islam'* (Kitab Bhavan, New Delhi, 1st ed., 2006,) pg. 25

[44] *'Minhaj Al-Muslim'* pg. 362

[45] Bakr Ishmael M., *Al Fiqh al– Wadih Minal–Kitab Was-Sunnah "Alal–madhahibil –Arba"ah pg. 162*

the *Hadana* until she marries. The boy remains until he reaches the age of puberty. After which he is given the choice to stay with his father or mother. (Same in Sudan) While in Morocco, the length of period is: 12years for the boy and 15years for the girl after which the child is given the choice to stay with the father, mother or another relative. Egypt has 9 years for the boy and more than this for the girl.[46] Nonetheless, the judge before whom a case for *Hadana* is brought has the discretion to pronounce on what he thinks would be best served the interest of the child.[47]

After the age of *Hadana;* when a child has grown up to face the challenges of life, the child has the right to choose between his two parents or other relatives with whom he/she shall live, though at this time, his/her father has the right over and above any other person.[48] This is found on a *hadith* reported by Abu *Dawud* that '*Abu Hurayrah* narrated that a woman came to the Prophet and said: 'O Messenger of Allah! My husband wants to take my child away from me. The prophet then made the mother sit down to a side and the father to another side, and made the son sit down between them and then said to the child 'this is your father and this is your mother; hold onto the hand of anyone you wish between the two of them, the child held unto her mother's hand and she went away with the child.[49] Imam *Malik* support that the still go with his/her mother while Imam Abu *Hanifah* opine that the child's father has more right to the child than his/her mother after the age of *Hadana*. This is because the child does not know with whom and what his/her interest is best served.[50] To this point, *Hadjian Abbas*[51] put together the age of transfer of custody, discretion, maturity and marriage in 15 Muslim Countries under various law and practice.

Country	**Sect/*Fiqh***	**Age of Transfer**	**Age of Discretion**	**Age of Maturity**	**Age of Marriage**

[46] '*Custody of Children in Shari'ah'*

[47] Ibid. 162-163

[48] Ibid. 163

[49] See for detail: *'Sunanu Abi Dawud'* hadith No. 2277

[50] Bakr Ishmael M., *Al Fiqh al– Wadih Minal–Kitab Was-Sunnah "Alal–madhahibil –Arba"ah. 163*

[51] Abbas Hadjian, is a bi-lingual (Farsi & English) California Certified Family Law Specialist, certified by the Board of Legal Specialization, of the State Bar of California. Mr. Hadjian's practice is limited to litigation of complicated Family Law issues, and private or Court assigned mediation. Mr. Hadjian is also a reputable expert in Iranian Civil and Family Law and Procedure, and provides legal assistance on the Web and on T.V. programs broadcasted worldwide. Mr. Hadjian is author of Divorce in California, a self-help divorce guidance published in 2000. See for more details: < http://abbashadjian.com/> accessed on 1/3/2023

		Boy	Girl	Boy	Girl	Boy	Girl	Boy	Girl
Afghanistan	Sunni/Hanbali	7	9	N/A	N/A	18	18	18	16
Azerbaijan	Shi'a/Ja'fari	N/A	N/A	BIC	BIC	21	21	18	18
Bangladesh	Sunni/Hanafi	N/A	N/A	7	9	18	18	21	18
Egypt	Sunni/Hanafi	N/A	N/A	15	15	15	15	18	18
Indonesia	Sunni/Shafi'i	N/A	N/A	12	12	18	18	19	16
Iran	Shi'a/Ja'fari	7	7	N/A	N/A	15	9	15	13
Iraq	Shi'a/Ja'fari	N/A	N/A	10	10	15	15	18	18
Jordan	Sunni/Shafi'i	N/A	N/A	15	15	18	18	16	15
Morocco	Sunni/Maliki	N/A	N/A	15	15	18	15	18	18
Nigeria	Sunni/Maliki	N/A	N/A	7	9	15	9	15/21	12/18
Pakistan	Sunni/Hanafi	N/A	N/A	7	9	18	18	18	16
Qatar	Sunni/Hanbali	N/A	N/A	11	13	18	18	18	16
Sudan	Sunni/Maliki	N/A	N/A	7	9	18R	18	Puberty	Puberty
Saudi Arabia	Sunni/Hanbali	N/A	N/A	7	7	18	18	18	18
Turkey	Sunni/Hanafi	N/A	N/A	BIC	BIC	18	18	17	17[52]

8.0 MAINTENANCES/FINANCIAL SUPPORTS CUM REMUNERATION IN *HADANA*.

It is mandatory under Islamic law that father and mother raise their children; give them moral supports, sound education (religious and other general knowledge of life) to their children. The father is the head of the family and in charge of maintaining the family financially,[53] regardless of whether he is rich or poor; he must assume the responsibility to the best of his capability. Allah

[52] '***In matters of child custody, child support and spousal support, Islamic nations apply civil and Islamic legal traditions differently'*** **(**Published in The Los Angeles Lawyer Magazine, April 2013) available online at <http://www.lacba.org/Files/LAL/Vol36No2/3028.pdf> see also: <http://abbashadjian.com/2013/05/the-children-of-sharia/> accessed on 1/3/2023

[53] Q. 4: 34

says: '…but he (father) shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear'[54]

Hence**,** it is the duty of the father to maintain the family in terms of sheltering, clothing and feeding the wife[55] and the children. He is also responsible for financing the education of children, and their general welfares. The *Sunni*[56] and *Shi'a* jurisprudence agree that during and after termination of the marriage, the father must maintain the children whether the wife is poor or rich.[57] It must be added that during the time when the father and the mother are living together with their children, the father are only entitled to maintain the family by providing their needs and having done that, the mother are not entitled to any further remuneration for taking care of their children.[58] However, if the custodian of a child is not the mother, hence, she is entitled to remuneration in addition to maintenance of the child.[59] Similarly, the maintenance of the children is the duty of the father. On his death or incapacity for maintenance, this duty devolves upon the paternal grandfather, and then upon the mother, maternal grandfather and grandmother, and paternal grandmother, with preference going to the nearer kin of the father. If the grandparents are similar in degree of kinship, they must pay maintenance expenses equally. The court has power to enforce support against a

[54] Q. 2: 233

[55] During the period they are living together as spouse and also during the waiting period of revocable divorce. See for detail: Bakr Ishmael M., *Al Fiqh al– Wadih Minal–Kitab Was-Sunnah "Alal–madhahibil –Arba"ah. 165*

[56] Comprises of Malikiyyah, Shafihiyyah, Hanbaliyyah and Hanafiyyah.

[57] ***In matters of child custody, child support and spousal support, Islamic nations apply civil and Islamic legal traditions differently'*** **see also** Article 78, 148 and 155 of the United Arab Emirates Federal Law No.28, (Personal Status Law, PSL) 2005. Available online at <http://ejustice.gov.ae/portal/page/portal/eJustice%20MOJ%20Portal/About%20Us/Law%20of%20Personal%20Affairs>

[58] Bakr Ishmael M., *Al Fiqh al– Wadih Minal–Kitab Was-Sunnah "Alal–madhahibil –Arba"ah pg. 165*

[59] However, it is also agreed to that compensation may be paid to the mother of a child if such mother demands for remuneration and it is in the best interest of the child that his/her mother takes custody. See for detail: Bakr Ishmael M., *Al Fiqh al– Wadih Minal–Kitab Was-Sunnah "Alal–madhahibil –Arba"ah. 165*

third party.[60] Similarly, any dispute or disagreement on custody of child may be resolved an Area Court of Northern Nigerian.[61]

9.0 DIFFERENCE BETWEEN PHYSICAL CUSTODY AND LEGAL CUSTODY OF A CHILD.

Although this paper is only concerned itself with *Hadana* (physical custody) and not *Waliy* (legal custody or guardianship) of a child. Nonetheless, it is pertinent at this juncture to state clearly that in all the cases of *Hadana,* father is the rightful legal custodian i.e., guardianship, (*waliy*) of his child regardless of who has the physical custody of the child. This is to say physical custody of a child is different from legal custody (i.e., guardianship). Hence, Fathers must approve of their children's education, including the places and types of schools attended and the type of education received. Similarly, financial guardianship is vested in fathers and/or grandfathers unless transferred by agreement or assigned by the court to mothers or third parties for some reasons. Fathers are the recipients of a child's earnings after divorce and are authorized to purchase, sell, encumber, and manage a child's properties. This right is especially significant if children receive inheritances or gifts during the marriage. This rule also is relevant when children receive public assistance or private insurance benefits.[62]

10.0 CHALLENGE OF SUBMISSION TO CUSTODY UNDER THE COMMON LAW AND IMPLICATION FOR MUSLIMS

Marriage under the Statutory Law brings the parties thereto under the Matrimonial Causes Act (MCA).[63] A statutory marriage that comes under the jurisdiction of the Matrimonial Causes Act (MCA) must be celebrated before a licensed marriage officer outside Nigeria or registrar of marriages within Nigeria between a man and woman that are previously single. Section 71 of the

[60] Bakr Ishmael M., *Al Fiqh al– Wadih Minal–Kitab Was-Sunnah "Alal–madhahibil –Arba"ah. 166- 168.* See also '***In matters of child custody, child support and spousal support, Islamic nations apply civil and Islamic legal traditions differently'***

[61] Item 1, Part II of the Schedule of Area Court Law

[62] Ibid. pg. 169

[63] Cap 220, 1970

Matrimonial Causes Act is very clear that custody should be decided based on the child's best interest.

> (1) In the proceeding with respect to the custody, guardianship, welfare, advancement or education of children, the court shall regard the interests of those children as the paramount consideration; and subject thereto, the court may make such order in respect of those matters as it thinks proper.[64]

In *Odogwu V. Odogwu*[65] the parties in the case were married in 1982 and had three issues aged 9, 8 and 6 years. Their marriage was pronounced dissolved upon the petition of the husband alleging adultery against his wife –Odumeoku Odogwu- on 17th December, 1990 by Adeyinka J. sitting in Lagos State High Court. Custody was among other things considered which went from court of Appeal to the Apex court. Belgore JSC (as he then was) held that 'the interest of children which are required to be taken into consideration in custody matters by virtue of S. 71 (1) of MCA 1970, cannot be qualified in terms of material such as money or food but they must of necessity promote the happiness and security that tender age requires'. Case law has upheld this principle but mothers that want custody are held to very strict proof that they can maintain the children without regard to the courts powers to grant maintenance orders. Mothers describe the arduous proof they are made to provide that they have a personal residence, job and income before they are given custody.[66] While it seems logical and fair that mothers in the contemporary world are encouraged to have a job, child maintenance is supposed to provide the necessary financial support that she may lack to take care of her child or children; and this is responsibility of the father without necessarily takes the physical custody of the child.

The principle of the best interests of the child remains paramount under the Act as under Islamic law. The child is to be afforded the protection and care that is necessary for its wellbeing, which would include the right to survival and development. The rights to an identity from birth, the freedom of thought, conscience, association, peaceful assembly and religion are guaranteed, under the guidance of its parents. The child has a right to family life; its dignity is to be respected at all

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[64] S 71(1), Matrimonial Causes Act, Cap 220, 1970

[65] (1992) 2 NWLR Part 225 pg. 539

[66] MzAgams, 'Child Custody in Nigeria' available online at <http://mzagams.wordpress.com/2011/11/18/child-custody-in-nigeria/> accessed on 28/2/2023

times; it is entitled to health and health services, parental care, maintenance, leisure and recreation, free compulsory and universal primary education and freedom from discrimination.

10.0 CONCLUSION

Islam sees the paramount interest of a child to be best served with the biological mother of such child, unless such mother is not available or is unfit with any of the defects earlier discussed. If the mother is not available or unfit, the custody still goes to some set of female relatives to the child in a hierarchical order with whom it is believed the paramount interest of the child would be best served. It is only when these set of women exhausted that the custody can come to the father. The reason for giving priority to the woman in a custody issue is the caring nature, dedication, attention and tender feeling a woman has toward children generally. *As-Sayyid Sabiq* succinctly put this thus:

> The reason for giving priority to the mother is that she has proper right to custody and breast-feeding (nursing) of the child. This is because she is more skillful and more capable to discharge the duty better than man. With regard to *Hadana,* she is endowed with patience and time to attend to the problems of the child both of which she has more than man. So she is given the priority in the interest of the welfare of the child.[67]

11.0 RECOMMENDATION

In common law, award of custody of child(ren) is usually either to father and mother who is able to prove that the paramount interest of the child would be best served with him.[68]

As earlier discussed, marriage under the Statutory Law brings the parties thereto under the Matrimonial Causes Act (MCA). Hence, only the High Court has jurisdiction in both dissolution of marriage conducted under the Act and custody of children thereto.[69] It is common nowadays that many Muslims couple conduct their marriage under the Statute hence subject themselves to arduous of common law proceeding of dissolution and custody of child(ren). It is therefore recommended for all Muslims to conduct their marriage

[67] As-Sayyid Sabiq, *Fiqh As-Sunnah*, Trans. Muhammad Sa'eed Dabas & Jamal al-Din M. Zarabozo (American Trust Publications, USA, 1991). 405.

[68] See section 71 (1) of the Matrimonial Causes Act, Cap 220, 1970

[69] See section 2 of the Matrimonial Causes Act, Cap 220, 1970

in line with the provision of *Shari'ah* and shun subjecting themselves to man-made laws which are erroneous, defective and fallible.

It is also recommended that several provisions governing child custody under Islamic law should be codified in such a way that everyone would understand, has easy access and easy reference to it. In doing this, it will go a long way to enlightening the Muslim community.

Appraisal of Workplace Sexual Harassments in Nigeria: The Inadequacy of the Extant Laws

Aliyu Abubakar,* Musa Yahaya and Ahmad Aliyu Zanwa*****

Abstract
Allegations of Sexual harassments in public offices in Nigeria is recently taking a disturbing dimension, with highly placed public officials being indicted to the extent of demanding sexual gratification from their colleagues in return for lucrative assignments, recognition or viable posting among other reasons. Various laws were enacted to address various offences in Nigeria inclusive of sexual harassments. However, there is no single comprehensive national legislation that addresses workplace sexual harassment in Nigeria. There is as well, plethora of court decisions sanctioning the acts of workplace sexual harassment in Nigeria, but those decisions cannot be comprehensive and exhaustive as the enabling laws were also not comprehensive or exhaustive. This paper appraised various provisions of the laws of sexual harassment in Nigeria side by side with the recent allegations of sexual harassments in the Senate of the Federal Republic of Nigeria, as it particularly affects the integrity of the Public Service of the Federation.. This paper observed that the laws seeking to punish the acts of sexual harassment in Nigeria are inadequate, and it is accordingly recommended that a single national comprehensive legislation should be enacted to address the disquieting development of sexual harassment in Nigeria public offices. This paper seeks to address the question, why should the Senate insists on passing the Sexual Offences Bill into law in 2020 against the lecturers in the tertiary educational institutions in the country while there is a skeleton in their cupboard? This paper adopts the use of doctrinal method of research.

Keywords: **Appraisal, Sexual, Harassment, Inadequacy Nigeria, Laws.**

1.1 INTRODUCTION

Allegations of sexual harassments in Nigerian workplaces is indeed, taking a disturbing dimension, as it is now being cast against the high ranking officials of the government.[1] On the 28^{tth} day of February 2025, Senator Natasha Akpoti Uduaghan made an allegation of sexual harassment against the Senate President of the 10th Assembly of the Federal Republic of Nigeria. That she

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[1] *Abimbola Adelekun,* A *Critical Look at the Sexual Harassment Allegation in the Senate* The Nation News Paper (4th February 2025) P 14

alleged the violation of her rights, privileges and entitlements as a federal legislator simply because of her refusal to accept the sexual advance of the Senate President of the Federal Republic of Nigeria. The basis of which she petitioned the Senate Ethics and Privileges Committee, against the Senate President, lamenting that she was harassed sexually by the Senate President and she resisted the harassment, as a result of which she was intimidated, maltreated and maligned in the senate.[2] The Senate Ethics and Privileges Committee presented its report at the plenary at the senate chambers, recommending the suspension of Distinguished Senator Natasha.

Therefore, Distinguished Senator Natasha was suspended for the period of six (6) months and prevented from parading herself as a Senator of the Federal Republic of Nigeria among other sanctions.[3] Civil society organizations stood firmly not only for the protection of Distinguished Senator Natasha's right to dignity of human person and freedom of expression, but also for advancing the law and promoting the course of justice.[4] It is pertinent at this juncture to put pivot and effort together in order to shift the liver, The National Assembly has a duty to enact a comprehensive national legislation against workplace sexual harassment applicable to the entire public service of the country.

1.2 THE THEORY OF WORKPLACE HARASSMENT

As a concept, workplace harassment has been defined by legislations in Nigeria. Section 46 of the Violence Against Persons Act, 2015, defines sexual harassment as 'Unwanted conduct of a sexual nature or other conduct based on sex or gender which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment which may include physical, verbal or non-verbal conduct[5]'. In the case of *Ejieke Maduka v Microsoft Nigeria Limited and 3 Ors*, the National Industrial Court of Nigeria restated with approval the definition of sexual harassment enshrined in the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) General Recommendation Number 19 of 1992 as follows:

[2] Ibid.
[3] Nasarawa Mirror *News Paper*. 7th March 2025. On https//www.nmirrorfacebook.com at 11 : 00 am.
[4] Abimbola Adelekun Op. Cit p 1
[5] Gary N. Powell, "Definition of Sexual Harassment and Sexual Attention Experienced," The Journal of Psychology: Interdisciplinary and Applied 113, Hong Zhu, Yijing Lyu and Yijiao Ye, "Workplace Sexual Harassment, Workplace Deviance, and Family Undermining," International Journal of Contemporary Hospitality Management 31, no. 2 (2019), 595-596

> *"Such unwelcome sexually determined behavior as physical contact and advances, sexually coloured remarks showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment."*

The Court further explained that CEDAW General Recommendations Number 12 of 1989 recognizes sexual harassment as "violence against women". Sexual harassment is an affront to the dignity of person and breach of the right to freedom from degrading treatment.[6] Taking cognizance of the foregoing statutory and judicial stand points, sexual harassment connotes any form of unwelcome behaviour of a sexual nature which may include physical, verbal or non-verbal conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment and is tantamount to violence against the person and an affront to his or her dignity. Examples of sexual harassment includes unwanted sexual statements such as sexually explicit jokes, comments on physical attributes, spreading rumors or rating others about their sexual activity in front of others, displaying sexually explicit drawings, pictures or written material. It includes unwanted sexually oriented statements in writing, text messages, face book, and other media outlets. It's also includes unwanted personal attention through personal interaction, pressure for dates, unwanted visitation, where sexual or romantic motive is obvious. Sexual harassment is also exemplified by unwanted physical advances such as touching, hugging, kissing, fondling, touching oneself sexually for others to see, sexual assault, unwanted sexual intercourse or other sexual activities.[7]

The Lagos State Domestic Violence Law defines sexual harassment as;

[6] R. Gupta, Sexual Harassment at Workplace, Haryana LexisNexis, (2014)

[7] Abe, 'Defining and Awareness of Sexual Harassment among Selected University Students in Lagos Metropolis, Nigeria', Journal of Emerging Trends in Educational Research and Policy Studies (2012) 3(3), 212-218.

> *An act of (a) unwanted or coercive sexual contact, (b) unwelcome verbal or non-verbal conduct of sexual nature, (c) any other behaviour of a sexual nature that create an intimidating, a hostile or offensive environment.*[8]

Furthermore, similar definition of sexual harassment was provided by Violence against Persons (Prohibition) Act[9] Sexual harassment is nevertheless, a violation of constitutionally protected rights of a citizen as every person's right to dignity and honour is recognized as fundamental right under the Nigerian Constitution.[10]

From the foregoing, it could be deduced that a person is said to sexually harasses another person if they: make an unwelcome sexual advance, or an unwelcome request for sexual favours, or engage in other unwelcome conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated. Hence, sexual harassment may include any of the followings:

i. Inappropriate physical contact
ii. Intrusive questions about a person's private life or physical appearance
iii. Sharing or threatening to share intimate images or film without consent
iv. Unwelcome touching, hugging, cornering or kissing
v. Repeated or inappropriate invitations to go out on date
vi. Sexually suggestive comments or jokes that offend or intimidate
vii. Requests or pressure for sex or other sexual acts sexually explicit pictures, posters or gifts
viii. Actual or attempted rape or sexual assault
ix. Being followed, watched or someone loitering (hanging around)
x. Sexually explicit comments made in person or in writing, or indecent messages (SMS, social media), phone calls or emails – including the use of *emojis* with sexual connotations sexual gestures, indecent exposure or inappropriate display of the body

[8] S 20 (1) Lagos State Domestic Violence Law 2007
[9] S. 14 Violence Against Persons (Prohibited) Act 2015.
[10] S. 34 of the constitution of the Federal Republic of Nigeria (1999)

xi. Unwelcome conduct of a sexual nature that occurs online or via some form of technology including in virtual meetings inappropriate staring or leering.
xii. Repeated or inappropriate advances on email or other online social technologies.
xiii. Sexual harassment can involve conduct by one or more people and can be a single incident, repeated conduct or part of a course of conduct.

The workplace sexual harassment is only against the law when the victim is a worker. Then who is 'a worker? The question receives a simple answer that a worker is any person who performs work in any capacity, such as:

i. An employee
ii. A contractor or subcontractor
iii. A small business owner who works in the business
iv. An employee of a contractor or subcontractor
v. An employee of a labour hire agency
vi. An outworker
vii. An apprentice or trainee
viii. A student on work experience
ix. A volunteer.

Though, regardless of the sex, sexual orientation or gender identity of the person involved. It is necessary to state that, intention as in "*mens rea"*[11] is not relevant in cases of harassment. However, the conduct may be sexual in nature even if the alleged offender has no sexual interest toward the person of the victim, or is not aware that he is acting in a sexual way. For instance, Mallam Wada works in a Duadu kitchen. One of his co-workers is always making jokes and comments. She talks about her life in graphic detail and asks Mallam Wada insidious questions about his experiences. She "alleged to have accidentally" brushed her hand against Mallam Wada when walking past him. Mallam Wada tries to avoid her but can't always do so because they work closely together. He's

[11] *Mens rea* is the mental element or criminal intent; guilty mind. It is the state of mind that the prosecution must prove that a defendant had when committing a crime. For example, the *mens rea* for theft is the intent to permanently deprive the rightful owner of the property. It is the second of two essential elements of every crime at common law, the other being the *actus reus*. Pl. *mentes reae*

afraid to report her behavior because he thinks no one will believe him since he's a man being harassed by a woman.

1.3 LEGAL FRAMEWORK FOR COMBATING AND PREVENTING SEXUAL HARASSMENT IN THE WORKPLACE IN NIGERIA

The fight against sexual harassment in the workplace remains an international challenge with which concerted effort is peremptory for the international community to triumph over this problem. Sexual harassment is physically and psychologically harmful and should not be tolerated anywhere under any circumstance, including work place. According to the International Labour Organization (ILO), the mere existence of legislations and institutions to prevent sexual harassment in the workplace is not an end to itself; the challenge is how to keep them to function effectively. The challenges stem from inadequate policy coherences at the national and local levels coupled with lack of cooperation and collaboration. To prevent sexual harassment, it is important to build industries and supportive workplaces where it is clear that sexual harassment is not tolerated by dismantling the culture of impunity that often surround it as well as gender, cultural and social norms. The effectiveness of any existing law lies in its applicability, implementation and enforcement mechanisms. As such adequate measures should be provided to enforce these laws appropriate means. One of which is to ensure the ratification and domestication of all international conventions or laws to which Nigeria is a signatory so as make them justifiable. For the purpose of this paper, the writer shall classify the mechanisms into

(a) Legislative and institutional mechanisms, and

(b) Administrative policy.

1.4 LEGAL FRAMEWORKS

Legal frameworks refer to formal laws as well as the system of government organizations that are set up to restrain sexual harassment. For people to be protected against sexual harassment there is the need for an appropriate set of laws and institutions capable of providing the necessary services. The services which need to be provided are prevention, withdrawing to rehabilitate workers who are engaged and victims of sexual harassment. Other services include the provision of advocacy and policy guidelines, initiating the review of laws, conducting awareness programmes and monitoring and evaluating the effectiveness of programmes dealing with sexual harassment. The

UN Convention on sexual harassment has been incorporated into Nigeria's *corpus juris*. It is legislation with international flavour containing the bill of rights and other national instruments. It is meant for Nigeria to combat and campaign against sexual harassment and to achieve the ILO goal towards the total prevention of all forms of sexual harassment; it must adhere strictly to the ILO Convention. Convention and accompanying recommendations have formed the basis on which most of the member states. Since the ratification of several international instruments, Nigeria has adopted various legislation, institutions, and administrative/policy measures at both federal and state. These are aimed at addressing various forms of sexual harassment, the short and long term strategies as well as outlining the roles of civil society and government in providing preventive measures in favour of victims which include workers. However, the reverse seems to be the case because the crime has witnessed an incredulous rise over. This is probably as a result of the inadequacies of the law and the differences encountered in establishing a case of sexual harassment in the workplace in Nigeria. The respect for human life, dignity, freedom of association and democratic ideals of the voice of equality, it is imperative for the drivers of employment, and individuals, institutions, organizations and public policies to provide employment with a human face which encourages productive and efficient employment relationship and that which also fulfils the standard of human rights.

Section 254 c (i) (f), 39 and 41 of the Constitution of the Federal Republic of Nigeria, 1999[12] alongside Section 7 (6) of the National Industrial Court Act empowers the National Industrial Court to apply international best practice in industrial relations. The reason for the continued incidence of sexual harassment in the workplace in Nigeria is not with the laws but with effective implementation and enforcement of the laws.

The ILO agrees that some loopholes in the legal framework were one of the main causes of sexual harassment in the workplace in Nigeria and across the globe. These are lack of legal harmony and cohesion among the laws, which hinder implementation and enforcement difficult. It is on this basis that in cases of sexual harassment in the workplace, that the Nigerian government has put the following structures in place. A section on sexual harassment was included in the Labour Standard Bill (Section 24) during the Tripartite Retreat on the Review of National Labour Bills

[12] Section 319 of the Constitution

which was held in the year 2020. Several institutions were established to help enforce the laws and monitor the policies. Law enforcement is the activity of making certain that the laws of an area be obeyed. It is intended to discover, deter, rehabilitate, or punish people who violate the rules and norms governing a society. Indeed, law enforcement requires a direct involvement in surveillance to dissuade and discover criminal activities. It is the persistence of sexual harassment in the workplace that encourages governments like in Nigeria to establish government and encourage Non-Governmental Organizations such as Women Against Rape, Sexual Harassment and Exploitation (WARSHE), Cee-Hope-Nigeria, Sexual Offences Awareness and Victims Rehabilitations Initiative (SOAR) and Tamar Sexual Assault Referral Center (SARC) and United Nations agencies such as NAPTIP, IPEC, WOTCLEF, UNICEF among others as part of the working mechanisms for the enforcement against sexual harassment in the Workplace.

1.5 APPRAISAL OF THE EXTANT LAWS PROHIBITING THE ACT OF WORKPLACE SEXUAL HARASSMENT IN NIGERIA

On the 8th day of July 2020, the Nigerian senate passed a Sexual Harassment Bill, targeting mainly the prevention, prohibition and criminalization of sexual harassment in the Nigerian tertiary institutions of knowledge.[13] Section 1 of the said Bill provides thus;

> *This Bill was enacted to promote and protect ethical standards in tertiary education, the sanctity of the student-educator fiduciary relationship of authority dependency and trust and respect for human dignity in tertiary educational institutions by providing for;*
>
> 1. *Protection of students against sexual harassment by educators in tertiary educational institutions.*
> 2. *Prevention oif sexual harassment of students by the educators in the tertiary educational institutions; and*
> 3. *Redressal of complaints of sexual harassment of students by educators in tertiary educational institutions.*[14]

[13] Section 1, Prevention, Prohibition and Redressed of Sexual Harassment in Tertiary Educational Institutions Bill 2019

[14] Ibid

It is crystal clear that the words and spirit of section 1 quoted above,[15] seeks to punish lecturers at the tertiary educational institutions only on account of the fact that there exist a fiduciary relationship and dependency between a student and the lecturer. Fiduciary relationship according to Black's Law Dictionary sixth edition, is a relationship in which one person (the fiduciary) is obliged to act in the best interest of another person (the beneficiary), and is entrusted with the management of property, money or other assets for the benefit of that person.[16] If fiduciary relationship exist whenever a person is bound by law or obliged to act in the best interest of another, it can safely be concluded from the foregoing that the senate president of the Federal Republic of Nigeria is also having a fiduciary duty towards his colleagues in the senate, as provided under the senate rules that the senate president is required to protect the rights and privileges of the senators ensuring that they are not unfairly treated or denied their rights.[17] Thus, now that there is an allegation of sexual harassment against the senators of the Federal Republic of Nigeria, workplace sexual harassment bill should quickly be enacted to address sexual harassment issues in high ranking public offices in Nigeria, as the Sexual Harassment Bill 2019 is obviously ill destined.[18]
Another law which seeks to prohibit sexual harassment in Nigeria, is the Violence against Persons (Prohibition) Act, section 14 thereof prohibits and punishes sexual harassments and coercive sexual contacts. [19] Criminal Code Act on the other hand prohibits and punishes various forms of sexual offences including advances.[20] While Penal Code Law also prohibits and punish various forms of offences including unwanted touching and sexual advances.[21] It is important to note that all the above cited federal legislations do not specifically address the syndrome of workplace sexual harassments in Nigeria. However, the Lagos State Domestic Violence Law had specifically prohibits and punishes the act of public places sexual harassments in the state[22], where it provides thus;

[15] Ibid
[16] R Joseph Nolan and JM Nolan Haley, Black's Law Dictionary (6th edn.) West Publishing Co. p 255, 1990
[17] Rule 23, Standing Orders of the Federal Republic of Nigeria, 2021
[18] Academic Staff Union of Universities *'Memorandum against the Sexual Harassment Bill in Nigeria' in www.asuu.org on 6th Day of March 2025 at 2:52 pm.*
[19] The Violence against Persons (Prohibition) Act 2015 (VAPP ACT)
[20] Ss. 214, 215 and 216 of the Criminal Code Act 2004
[21] Ss. 282, 283 and 284 of the Penal Code (Northern States) Federal Provisions Act 1960
[22] Lagos State Domestic Violence Law 2007

> *A person who commits an act of sexual harassments against another person in public place, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand naira, or imprisonment for a term not exceeding three years or with both*[23]

This section explicitly prohibits sexual harassments in public places, making it punishable under the law. However, the law does not provide an adequate legal framework which is capable of safeguarding rights, and providing remedies for the victims of sexual harassments in the state, thereby opening the realm of further legislative enactments in this direction.

There exist also a plethora of judicial authorities addressing the acts of sexual harassments in Nigeria. However, the said *stare decisis* do not also provide adequate remedies to the matter largely as a result of inadequate legislative response in this direction. In the case of *Pastor* ***(Mrs) Abimbola Patrick Yakubu v Financial Reporting Council of Nigeria & 1 Anor,*** the Court of Appeal relied on Section 34 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and an international instruments to establish the existence of workplace sexual harassments in Nigeria.[24] Also, in the case ***Stella Ayam Odey v Ferdinand Deapah & Anor*** the National Industrial Court of Nigeria held that the claimant was sexually harassed by the 1st Defendant, and that her fundamental human right against discrimination was breached.[25] The case demonstrate the lack of adequate statutory coverage of the area of workplace sexual harassments, compel the judges to be meandering about left right and center in search for the law which will adequately address workplace sexual harassments in Nigeria, but in vain.[26] It can thus be concluded that having a uniform or exhaustive definition of sexual harassment is nigh impossible, some countries in the world have state definitions, some have federal or national definitions all of which varied from each other. Meticulous observations of developed country's' definitions of sexual harassment indicates that there is a marked difference in elements that constitutes sexual harassment. Most developed countries considered and recognized male, female and other forms of sexual identity either as victims or perpetrators of sexual harassment, while most developing countries mainly

[23] S 28 (1) Ibid
[24] (2015) LPELR 25513 (CA)
[25] (2013) 13 NWLR (pt) 1371 p 217
[26] Emuobo Enudainohwo 'The Inadequacy of Legal Provisions on Workplace Sexual Harrassments in Nigeria nad Ghana; The way Forward' *Jumal Hukum (*Journal of Law)

recognized the male gender as perpetrators of sexual harassment and women are majorly regarded as the victims. This fundamental difference may be attributed to the prevalent cultural values and norms of the countries concerned. It is pertinent to note that the developed countries such as the United State of America, France, Canada and Germany, are predominantly an egalitarian societies. In contradistinction, all developing countries such as Nigeria Kenya Uganda and Tanzania majorly considered male as perpetrators and women as victims[27]. Hence, having a universal definition of phrase 'sexual Harassment' in the workplace may be farfetched, but there are some elements that should be included in the definition of sexual harassment in the workplace; it must –

i. All forms of harassments in the work sphere (sexual, non-sexual or mixed behaviors'). That is gender harassment, or sex discrimination.
ii. Protect all gender
iii. Include likely conduct that constitutes unwanted sexual behaviour explicitly.
iv. Include all workplaces.
v. Include third parties or all persons that have or might likely have relationship with the workplace (client or customers, contractors etc);
vi. Include all ranks at work, not only superiors to subordinates, some rank positions and superiors to subordinates.

The above elements should be considered in framing a comprehensive working definition of workplace sexual harassment in Nigeria. Assuming that was the case, Senator Natasha, if she could establish that she was sexually harassed by the Senate President as required by law, she need not report her case to the United Nations.

1.6 INADEQUACIES OF THE EXTANT LAWS AGAINST WORKPLACE SEXUAL HARASSMENT IN NIGERIA

The frequent reporting of workplace sexual harassment in Nigeria is a bad indicator that the legal framework of workplace sexual harassment has a limited scope in the country. Apart from the fact that there is no single comprehensive national legislation criminalizing the act of workplace sexual

[27] 'Rainn. *Victims of Sexual Violence Statestics'* www.rainn.org on 11 May, 2025 @ 12 : 30

harassment, the definitions provided by virtually all the enabling laws were narrow in also scope.[28] According to International Labor Organization (ILO),

> *Sexual harassment at work is a form of violence and discrimination against women and men and includes any unwelcome act of a sexual nature that might reasonably be expected or be perceived as offensive or humiliating when such conduct interferes with work, is made a condition of employment or create an intimidating, hostile or offensive work environment.*[29]

The Nigerian laws against sexual harassment at work, put more emphasis of physical contact or verbal contact, while the international standard definition goes beyond physical or verbal contact and embraced within its purview, intimidation, hostile working environment whether actual or perceived.[30] United Nations General Assembly also adopted a wider definition of sexual harassment at work to include request for sexual favour and other verbal or physical conducts. Consequently, the legal parameter used to define sexual harassments at working place in Nigeria, is below the international standard.[31] Apart from narrow definition, Nigeria does not have a single comprehensive national legislation, which criminalizes the act of sexual harassments at work, thereby rendering rights of the victims of sexual harassments unprotected.[32]

Inadequate punitive measures is another major defect surrounding the quest of protecting the rights of sexually harassed victims, as the maximum punishment of sexual harassment under the Violence against Persons (Prohibited) Act is five years imprisonment of fine of ₦500,000.00 (Five Hundred Thousand Naira only) far below the international standard.[33] Conversely, the International Labour Organization had set out a policy guideline for determining the punishments of sexual harassments among member states which include; fair investigation, confidentiality, support for victim, warning, suspension, demotion, loss of benefits and dismissal.[34] Another factor militating against the enactment of comprehensive legal regime for work place sexual harassment in Nigeria is

[28] Ibid.
[29] International Labour Organization Convention 190 Article 2
[30] Ibid.
[31] UN General Assembly Resolution 48/104, 1993
[32] Emuobo Enudainohwo 'The Inadequacy of Legal Provisions on Workplace Sexual Harrassments in Nigeria nad Ghana; The way Forward Op Cit P 24
[33] S 34 VA A P 2015
[34] Ibid

insufficient enforcement mechanisms. The international standard requires member states to establish an independent unit of investigations and enforcement of sexual harassments laws among member states, as it will enable the victims to have proper reporting procedure without being subjected to psychological trauma or stigmatization..[35] Senator Natash reported her matter to the United Nations during Inter Parliamentary Union (IPU) in New York, where she lamented that she will not get justice through the reporting and enforcement mechanisms for the protection of victims of sexual harassments in Nigeria.[36]

1.7 GAPS IN SEXUAL HARASSMENT LEGISLATIONS IN NIGERIA

The following gaps were observed to have existed in the various Nigerian legislations against sexual harassment in Nigeria.

a. Lack of Adequate Punitive Measures

Virtually all the Nigerian legislations relating to matters of sexual harassments do not provide adequate punishments, as the maximum penalty provided by Violence against Persons (Prohibited) Act is 14 years imprisonment, giving emphasis on options of fine irrespective of the gravity of the offence, while the remedies available for the victims are also limited.[37]

b. Limited Definition

The Nigerian laws of sexual harassments at workplace do not have a working definition or a guiding principle, which may help in creating a scope that will tally with international standard definition of sexual harassment at work place. Thus, the reason for the failure of the institutions mandated to protect the rights of sexually harassed victims in Nigeria.

c. Lack of Precision in Prosecution and Enforcement Procedures

The Nigerian laws on sexual harassment at work place also fall short of requirements precision and specification of investigations and enforcement procedures, as in most cases, the courts usually make recourse to general procedural laws in trying to publish the offence. This certainly will not satisfy the quest for justice. Meanwhile, all the laws were specifically enacted to comber work place sexual harassment in the country.

[35] ILO Ibid
[36] BBC News program of 12 March 2025 at 8 Pm
[37] S 21 VAPP 2015

d. Lack of victim centricity

The Nigerian laws had indeed criminalized the act of sexual harassment. However, protection of the rights of the victims of the said crime was not central to the enactments. Thus, reason for its inadequacy.

1.8 FACTORS HINDERING THE VICTIMS OF SEXUAL HARASSMENT FROM ACCESSING JUSTICE

In addition to the *lacuna* which exists in the laws of sexual harassment in Nigeria, some social, cultural and economic factors also play a significant role in preventing the victims of sexual harassment from accessing justice in the country.

i. Limited Access to Legal Aid

Nigeria has a Legal Aid Council which is saddled with the responsibilities of providing free legal assistance to the less privileged persons in the society. However, due to the sensitive nature of sexual allegations, the country ought to establish a special legal aid unit in the entire states of the federation, which shall have sole duty of providing an effective legal service to the victims of sexual harassment in Nigeria. This will certainly guarantee the protection of the victim's rights.

ii. Societal Trauma and Rejection of the Victim

The victims of sexual harassment are vulnerable and less privileged, whenever a person is sexually harassed particularly a lady, she is usually thrown in to psychological trauma, either the society will not accept her narration, or she may be prosecuted for defamation of character particularly where the alleged offender is more respected in the society than the lady. The case of Senator Natasha is a good example on this heading, the society finds it difficult to believe her because she cast an allegation against the senate president of the Federal Republic of Nigeria.

iii. Cultural Barriers

Some cultural and traditional beliefs play a significant role in deterring the victims of sexual harassment from either reporting the incidence of sexual harassment against them or disclosing the identity of the wrong doer for fear of cultural sanctions or deprivation. Many people in Nigeria particularly at the rural communities were reporting incidence of sexual

harassments against them for traditional or cultural excuses. This constitutes a major setback in clamoring for the protection of the rights of victims of sexual harassment in the country. Thus, preventing them from access to justice.

iv. Fear of Retaliation

Fear of retaliation is also a factor militated against the rights of the victims of sexual harassment to access justice. The wrong doers in this context were usually stronger in terms of social stratification, thereby having the better option of retaliation without the victim possessing any resisting ability. The law and policy makers of the country should take in to account the vulnerability nature of the victims of sexual harassment and provide adequate safeguards against retaliation.

v. Limited Counseling and Support Services

vi. The Nigerian society and the law do not provide a conducive atmosphere for counseling, educating and rendering support services to the victims of sexual harassment, thereby allowing them to struggle on their own for counseling education and support. This in fact, was the reason for which Senator Natasha ran to the United Nation's Inter Parliamentary Union for support.

vii. Complex Legal Rules and Procedures

Some existing legal rules and procedures including court rules have become so complex that they tend to obstruct access to justice rather than grant access to justice. An example of the setback cause by courts complex rules is the provision of order 4 (4) of the Rivers State High Court (Civil Procedure) Rules 2010 which is also contained in the other court rules. It provides that the judge at any time, allow to be regularized any process which it deems fit to allow, although such leave of court might be granted with cost. Now parties have utilized this order to perpetuate delays and harshness to the system. They make applications every now and then to gag the other party, and then pay penalties (costs) that are usually nominal in nature. Most women when faced with unnecessary protracted trials, they abandon their rights just to stay out of courts. Another procedure and complex rule that can be seen as most cumbersome and ends up either to allow the accused to go free or restrain the victim from access to justice, is the procedure involved in proving the crime of rape. The need for corroborative evidence had made it extremely difficult for a victim of rape to access justice.

In *Jegede v State* [38]the Supreme Court held inter alia that; A corroborative evidence capable of grounding conviction on a charge of rape must be cogent, compelling and unequivocal as to show without more that the accused committed the offence charged. However, the Supreme Court, in *IKO V STATE* [39]held that the court can convict an accused person in the absence of corroborative evidence in the case of rape.[40]

viii. Inordinate Delay

Access to justice in Nigerian Courts is usually faced with a basic factor of incessant adjournment in the cause of prosecuting offence4s in the country. It is said that justice delayed is justice denied, and such denial constitutes a major setback in the protection of sexually harassed person in Nigeria.

1.9 EMPLOYER'S RESPONSIBILITY AND OR LIABILITY ON MATTER OF SEXUAL HARASSMENT IN NIGERIA

The employers of labour in Nigeria have certain responsibilities in matters of sexual harassment in Nigeria. The following are some responsibilities of the employers of labour in Nigeria.

i. **Developing a Workplace Policy of preventing Sexual Harassment**

A good sexual harassment legislation which is aimed at protecting the rights of the victims of the crime, should be able to provide and impose certain responsibilities on the employers among which is the employer's duty to develop a workplace policy regulation which will prevent, protect and safeguard the rights of the victim of sexual harassment.

ii. **Provision of Regular Training and Creation of Awareness**

A good legislation which is seeking to prevent sexual harassment at work place should be able to compel the employers to be organizing regular training and enlightenment exercise among their employees to exonerate them from vicarious liability for inaction.

iii. **Vicarious Liability of the Employer**

Any legislation seeking to prevent the occurrence of workplace sexual harassment should be able to create a vicarious liability against negligent employers who are reckless about

[38] (2001) FWLR 640 – 846 (pt 66)
[39] (2001) FWLR pt68 1161
[40] Mabel Izzi and Opra orinpadiila "*Judicial Approach to Gender based violence in Nigeria; and Evaluation'* International Journal of Civil Law and Legal Research in www.civillawjournal.com om 23rd March 2025 at 10 20 pm.

the conduct of their employees in the workplace environment, thereby leading to the acts of sexual harassments. This legislative approach will certainly put the employers on their toes to have a secured working environment.

1.10 STRATEGIES OF STRENGTHENING THE LAWS AND INSTITUTIONS OF PROTECTING THE RIGHTS OF SEXUALLY HARASSED PERSON INS NIGERIA

Having come this far in appraising the sexual harassment laws at work place in Nigeria, it is pertinent to map out some strategies which will help the law and policy makers of the cou8ntry in protecting the rights of sexually harassed person in the country. Some of the strategies include

i. Review and Amendment of the Existing Laws

The extant laws addressing sexual harassment at work place in the country were virtually 20th century legislations which cannot answer many modern questions of policy guidelines in criminal legislations. Legislations like Criminal Code of Southern Nigeria and Penal Code of Northern Nigeria were all out dated laws which need review and amendment to tally with the best international standard, sexual related offences in these old legislations were largely difficult to apprehend and prove now because of the changes in the time and environmental factors.

ii. Enactment of Specific Sexual Harassment Law

From the foregoing, it is crystal clear that Nigeria did not have a single comprehensive national legislation on sexual harassment, this *lacuna* pave a way for inconsistent application of the laws in the country. Nigeria needs to have a comprehensive national legislation on sexual harassment which will cover most of the loop holes in the existing legal framework on work place sexual harassment in the country. The existence of state legislations will not prevent the function of the general national legislation for national policy guidelines.

iii. Align Laws with International Standard

The international community had set out a standard of identifying, criminalizing and punishing various acts of sexual harassments in order for the member states to follow suit. The desire for precision and consistency in sexual harassment laws and policy in the world

made it mandatory for Nigeria to align itself with the international standard of sexual harassment laws and policy.

iv. Establish a National Agency

v. Nigeria needs to establish a national agency which shall be saddled with the responsibility of administrating, monitoring and promoting the said National legislation on matters of sexual harassment in the country. This agency may establish various units for smooth running of its activities such as special legal aid unit, monitoring unit and enforcement unit all of which would have important roles in establishing and achieving a comprehensive legal regime in protecting the rights of sexually harassed persons in the country.

vi. Strengthen Law Enforcement

The Proposed national legislation and agency to needs be established for the protection and promotion of rights of sexually harassed persons in the country shall have a clear provision of empowering the enforcement unit from all legal disabilities in order to achieve the aim of the law. The enforcement unit in this regard shall have both investigative and prosecution powers.

vii. Improve Judicial Response

It is also clear from the above submissions, that there is inadequate judicial response to matters of sexual harassments in the country, largely as result of inadequate legal frame work to support the judicial response. Therefore, the law and policy makers of the country should give more emphasis on the comprehensiveness and flexibility of the law to accommodate wide judicial response.

viii. School and University Program

Program of studies should be introduced in the tertiary educational institutions to enlighten the public on the extent of the rights of sexually harassed persons in the country.

ix. Workplace Training and Workshop

The policy and law makers of the country should organize a periodic training workshop for the workers at their various –places of work I order to reduce the number of innocent victims of workplace sexual harassment in Nigeria.

1.10 CONCLUSION.

The incidence of Senator Natasha is an eye opener to Nigeria's inadequate legislative response to critical international issues, thereby placing the country's legal regime on sexual harassments far below the international standard. It is accordingly recommended that Nigeria should have a comprehensive national legislation which will sanction the act of sexual harassments at working places, and for the said law to give preference at victim's protection than technicalities or blaming lecturers of tertiary institutions.

APPRAISAL OF THE TESTAMENTARY FREEDOM OF A TESTATOR UNDER ISLAMIC LAW: A COMPARATIVE ANALYSIS

Abdullahi, N Liman* and Ahmed Aliyu Zanwa**

Abstract

Will (Bequest) is a branch of Islamic inheritance system which deals with the freedom of a testator dispose of his property. This study undertakes a comparative analysis of the testamentary freedom of a testator under Islamic law, wills laws and other jurisdictions of interest, examining the extent to which a testator can as of right dispose of his property upon death. The Islamic inheritance system, offers two major restriction to a testator when making a Will (bequest). A testator under Islamic inheritance law is restricted to dispose of his property to the maximum of 1/3 and he/she is not allowed to write a Will (bequest) in favour of his/her heirs so as to ensure the rights of legal heirs and other beneficiary are protected. The research work reveals a significant differences in the approaches of testamentary freedom. The Nigeria Wills laws, the Act and other administration of estates laws of some states allowed a testator with a testamentary as well as a complete freedom to dispose of all his property to anybody of his own choice. The testator's powers are constructively truncated by certain customary laws and rules in Nigeria. A comparative understanding and examination of the laws of the United Kingdom, India, Ghana and some Arab nations, highlights the diverse ways in which testamentary freedom is regulated and balanced for the purpose of ensuring that a testator, adhered to the Will laws for the purpose of protecting all and sundry in the estate distribution and management. The research also contributes to a deeper understanding of the complexities of testamentary freedom and its implication for Muslim testators who live and die in an environment that the Islamic law of inheritance (Will) does not adhere to.

Keywords *Testamentary freedom, Testator, Islamic law, Comparative, Analysis*

INTRODUCTION

The good aspect of this life is that no one knows how, when and where he is going to die[1]. The oblivious nature of this unwitting position perhaps makes a person(s) to adumbrate working plans of how his property/estate will be managed, distributed or shared when they are dead. Undoubtedly, a person who has property has the unlimited powers to take charge and equally control his property in the manner and ways he so desires or chooses when they are alive. Certainly, a person may decide to give out the entirety of his property as a gift to a stranger, a friend or an enemy irrespective of whether he has brothers, mother, wife, parents, children or relations and nobody has the right to challenge the action of a testator. This is because he is still alive and it is a gift, not inheritance.

The notion of testamentary freedom refers to the ability of a testator(s) under Islamic Law to dispose of their property upon death which is a fundamental feature of Islamic law of inheritance.[2] The Islamic law of inheritance deals with the ways and procedure of how Will are made, and properties of a deceased are manage, shared and distributed .The Qur'an and the Hadith made adequate provisions[3] for how a deceased person's property will be manage, and be distributed in accordance to the guiding principles of Islam. Allah SWT warned against eating the property of orphans unjustly[4] "those who unjustly eat up the property of an orphans, eat up, eat up a fire into their own bodies, they will soon be enduring a blazing fire". This is the myriad reason why properties to be acquired[5] or be made subject of a Will, must come from a lawful[6] source. In Islam, the testamentary freedom of a testator is completely guided and restricted to a large extent that, a

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[1] Death is invisible

[2] B.M. Busari' "Al-Wasiyyah Bequest according to the Four Sunni Schools: A Concise Analysis" *Journal of Humanity and social science* {2018} (vol.23) (2)

[3] Qur;an 4 v 1, 12, 176

[4] Q 4 v 7

[5] In Islam, there are several unlawful sources of acquiring property that are prohibited. These includes: 1. Riba (Usuary Interest) 2. Gharar (uncertainty/ unfairness)3. Gambling, 4 Haram (Unlawful) Activities and 5. Exploitation etc

[66] See the 40 Hadiths number 10 of Imam Al-Nawawi Collection

testator can only dispose of his property to the maximum of 1/3[7] to any person of his own choice,[8] which must not include his legal heirs.[9] In a Hadith Sa'd Abu Waqqas reported that, the Prophet was reported to have said;[10]

> The Prophet came visiting me while I was (sick) in Mecca, ('Amir the sub-narrator said, and he disliked to die in the land, whence he had already migrated). He (i.e. the Prophet) said, "May Allah bestow His Mercy on Ibn Afra (Sa`d bin Khaula)." I said, "O Allah's Messenger (ﷺ)! May I will all my property (in charity)?" He said, "No." I said, "Then may I will half of it?" He said, "No". I said, "One third?" He said: "Yes, one third, yet even one third is too much. It is better for you to leave your inheritors wealthy than to leave them poor begging others, and whatever you spend for Allah's sake will be considered as a charitable deed even the handful of food you put in your wife's mouth. Allah may lengthen your age so that some people may benefit by you, and some others be harmed by you." At that time Sa`d had only one daughter.

It is also important to know that rules governing testamentary freedom of a testator under Islamic law are unique to other Wills laws, administration of estate laws, Wills Act and in other Jurisdictions of interest. While Islamic law of Inheritance reiterated on the need to restrict the testamentary powers of a testator to protect the rights of individual heirs and other beneficiaries, the Act and other Wills laws seem to empower the testator with unrestricted freedom to dispose of their property.[11]

TESTAMENTARY FREEDOM OF A TESTATOR UNDER ISLAMIC LAW

Al-wasiyyah (bequest)is an integral part of Islamic inheritance Law.[12] It is a voluntary act of charity made by a Muslim during their lifetime or through their testamentary will after death. Will

[7] 1/3
[8] Q 2 v 180-189
[9] Where it is above 1/3 or that the Will is for an heir, consent must be given by all heirs.
[10] Sahih Buhari Book 55, Hadith Number 55
[11] Section 3 of the Wills Act 1837
[12] I. Hussain, *The Islamic law of succession* (Riyadh Darussalam global leaders in Islamic books. 2005)

is a branch of the inheritance system ordained by Allah[13] and it is a divine instruction of how properties of a deceased Muslim can be judiciously distributed, or be given out either as a gift (Bequest) to any person of his own choice. It is also important to know that the Islamic law of Inheritance does not emanate from the Prophet of Allah[14] and his companions but from Allah's clear instructions and directives.[15] Undoubtedly Islamic inheritance is more elucidated in clearer and unambiguous ways than any other knowledge or aspect of Islam.

Therefore, when a man dies as a Muslim, three basic succession rules must be complied with before we can commence the distribution of his property.[16] These three basic conditions are 1. Burial expenses, 2. Settlement of debts and 3. Execution of Will (Wasiyyah) before actual distribution. Where the deceased is buried successfully, the debts are clear, we will talk about Will's question. The question of whether the Will comply with the Shariah or the Islamic standard is important in ascertaining the validity of the Will. In Mariya & Anor v Adamu & Anor[17] where the court stated certain preconditions to inheritance that are necessary cum paramount in the and implementation of Will and distribution of estate of a deceased person.. These preconditions are thus: 1. The maker must have died 2. He must have left property and 3. The existence of an heir. Where there is no property there will be no Will.[18] likewise, no heir exist the whole property goes to Islamic treasury (Baytul-mal)[19]

> Will[20] (Wasiyyah) making is undoubtedly the instruction of the maker[21] of a Will which is to be enforced or implemented after the demise of the maker[22] and is enforceable only to the extent[23] of its compliance with Islamic law. The Islamic

[13] Qur'an 4 v7, 11,12 and 176
[14] Prophet Mohammad (SAW)
[15] Q 4 v 12-13.
[16] A.Gurin, *An Introduction to Islamic Law of Succession: tested and Intestate*(Malthouse Prints Lagos) At. P 10.
[17] (2016) LPELR 45470(CA)
[18] *Tijjani v& Ors v Yabi & Ors (2017) LPELR 44606(CA)*
[19] *Mariya & Anor v Adamu (2016) LPELR 45470 (CA)*
[20] Islamic Will differs with Will under the Act.
[21] *Obianwu Ors v Obianwu & Ors (2017) LPELR 42678*
[22] Q 4 v 11 and 12. Also it will be read at a designated time or day as may be determined by the Probate Registrar. The Will must be read in the Probate Registry or any place the Probate Registrar determines and he shall be the supervising officer
[23] *Sources of law of succession in Nigeria are 1, the received English Law introduced to Nigeria 2, Relevant Nigeria Legislation 3. The Judicial Precedent 4. Customary law 5 Islamic Law 6 international Law.*

> will and Western ways of making wills are distinct in nature, In the case of ***Babba v Ganjarma***.[24] The court held that,
>
> Fundamentally, the Islamic Law of inheritance is predicated upon the command of Almighty Allah (SWT) in the Holy Quran and prophetic traditions. In every situation, where the distribution of a deceased's estate comes up in a Court of law, there are some hurdles or conditions which a plaintiff must satisfy.

Will (Wasiyyah) must be Shariah compliant in that a testator can only give out up to 1/3 of the total estate,[25] and also the person who is to receive the gift as legatee must not be an heir, likewise, the testator must be free,[26](not one suffering from slave trade) sound and sane to dispose of his property which he legally owns. An insane testator under Islamic law is barred from making a will. It is important to stress a point here that an infant who lacks the legal capacity to make a valid Will cannot be a testator.[27]

Galore folks and others alike in our contemporary world of today, both within and outside Islam so much believe that making a Will (Wasiyyah) is connected or associated with death.[28]. Can this in any way translate to mean that any person who starts to think towards making his/her Will (Wasiyyah) is about to die? Certainly, this is fallacious and it can never be so. It is not for you to know when Allah will call on you. None of the prophets, companions and all peoples from generation to generation had ever predicted or ascertained the exact time of his/her death. This is for Allah and only the Almighty who knows when you will die. Allah[29] In Quran says "When their times come, they cannot delay it for a single hour or can they prolong it by a single hour" This is the myriad reasons why many people dislike making Wills because of the disturbing belief and fear of a human being cum selfish shallow thinking. Who will die will die. We should prepare one

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[24] *(2022) LPELR 57575 (CA)See also the cases of YARI v. MIKAILA in (1986) 5 NWLR (PT. 46) 106; HAMZA v. LAWAN & ANOR. (2006) LPELR 7657; SHEHU & ANOR. v. SHEHU (2017) LPELR 44596; TIJJANI & ORS v. YABI (2017) LPELR 44606 and IBRAHIM v. GIRKO (2021) LPELR 54953*

[25] Except where consent is given by other heirs.

[26] Not a slave

[27] Under the Maliki school, children and young person who are able to distinguish between good deed and bad deed or have attained the stage of discretion are allowed to make a valid will.

[28] *IQBAL SAUJAN' "*Islamic Law of Inheritance and Its Implication amongst Muslim Society: An Empirical Analysis"*'Journal of Contemporary IslamiT Law*, (2022) Vol. 7(1)

[29] Q 16 v 61

and keep it for tomorrow. The Prophet (SAW) stated this in a Hadith[30] reported by Ibn Umar (Allah be pleased with them) reported Allah's Messenger (may peace be upon him) as saying:" It is the duty of a Muslim who has something which is to be given as a bequest not to have it for two nights without having his will written down regarding it". Therefore, the importance of Will making can never be over emphasizes, we just have ensure that today or tomorrow we write one.

Islam offers a universal inheritance system that is applicable globally to all Muslims[31] when it comes to Wasiyyah (bequest). The system of distribution you see within the Muslims in Ghana is what you will see in Burkina Faso, Mali, Senegal, India, China etc. Unlike the Christian inheritance system which is never universal and can never be so, as stated by Emeka Chianu in his book, Law of Succession[32]

Will and debt[33] are like twins[34] siblings that are considered obligatory[35]or a prerequisite that must be cleared or settled before the actual distribution of deceased wealth. No distribution will commence when the debt has not been settled.[36] This is why the Noble Prophet of Islam often ask whenever he is called upon to perform a burial prayer (Janaza) for a deceased person, whether the deceased owns any debt and if the answer is in affirmative, sometimes he pays, in another time he asked the ummah to pay and sometimes, the Prophet declined praying for the corpse. This shows how important the settlement of the debt of a Muslim is.

There will be no execution of will (Wasiyyah) when debt of the deceased is unsettled.[37] Settlement of debt is a prerequisite to the will execution and the distribution of estate. Nothing will be given to any heir or person mentioned in the will without the debt of the deceased being cleared. This position implies that the wording of the Qur'anic provisions on Wasiyyah was mentioned.[38] before

[30] Sahih Muslim *Book 13, Number 3987:*
[31] Iqbal,S, Sayed.M.,' *Islamic Law of Inheritance and Its Implication amongst Muslim Society: An Empirical Analysis'* 2022 (2)(10) URL: http://www.ukm.my/jcil accessed on 13/03/2024
[32] At page 397
[33] See Badaji v Kuwara & Anor (2018) LPELR 4660 (CA*), Adams & Ors v Karami & Ors*
[34] 4 v 11 and 12
[35] Q4 11,12 and 176
[36] S.U. Keffi 'Practice and Procedure on Settlement of Claims before Sharing of Estate in Maliki School' (A paper delivered at Kongo conference Hotel, Zaria,2005) P.133
[37] *Hamza v Lawal* (2006) LPELR 7657 (CA)
[38] Quran 4 v 11 and 12

debt, however all the schools[39] of thoughts[40] Unanimously agreed that debt should be settled before the will is executed.

The conceptual understanding of Will (bequest) in Islam is different from the concept of Will under the Will laws and Acts. The laws of the will allowed a testator to devise their property by way of distribution in the Will to those they like or to their immediate family or relation. Under the Muslim law of succession, it is not[41] allowed for one to share his inheritance while still alive. The best of what they can do is not to share the estate by their Wasiyyah, (Allah has done the distribution)[42] but rather to make it in the form of a gift to the person who will not inherit from him as of right. For his children he can give them a gift while alive. Every child is allowed to collect gifts provided other children also receive the same. It is important to know that the distribution of estate only comes up when you're no more and that has been taken care of by Allah.[43] Islam does not expressly allow one to share his inheritance (when you are alive) through a Will. This is because a testator, cannot write a Will in favour of those that will inherit from him by right, and also a testator is restricted to 1/3 of the estate as his limitation when making will.[44]

TESTAMENTARY FREEDOM UNDER THE WILLS LAWS IN NIGERIA

Testamentary freedom refers to the right of a testator to dispose of their property as they wish after death. Under the Nigeria wills laws, a testator's power to make a will or dispose of their property is limited depending on where the testator dies. The power of the testator cannot be truncated nor reduced by anyone. He is at liberty to decide how to or not to dispose of his property. It is not for any person to question whether a testator is at liberty to dispose of his property in any manner he deems fit.[45] In the case of ***Igboidu v Igboidu & Ors***[46], the Court held that " …The law is clear that in the absence of any ambiguity, the testator's wishes must prevail.."

[39] Hussain. A *The Islamic law of Succession* (Darussalam Publication,2005)
[40] Maliki, Hanafi,Shafi'I, and Hambalis
[41] It is advised that as a Muslim who leaves outside Nigeria particularly where Islam is not popular, should endeavor to write his will in line with Islam otherwise, your property will be distributed according to their state law.
[42] See Q 4 11,12 and 176
[43] Q4 v11,12 and 176
[44] A. Yusuf and E.E Sheriff, Succession Under Islamic Law (Malthouse Press LTD, 2011) At P.163.
[45] *Adewunmi & Ors v. Okunade & Ors. (*2012) LPELR 56212 (CA) (Pp. 37-38
[46] (*1998) LPELR 6414 (CA)*

The freedom of a testator under the Wills and various administration of estate laws in Nigeria differs from one place to another. In ***Adewunmi & Ors v Okunade & Ors,***[47] the court reiterated the powers of the testator to bequeath his property to anybody of his own choice. "In any case, no law prevents a Testator, in the exercise of his freedom of choice, to bequeath his property to anybody he wishes, whether related by blood or not." It is imperative to pose and ask this question whether a testator's capacity to dispose of his property by will is subject to native law and custom.[48] For example in Anambra State the court in ***Okafor v Okafor***[49] "The Administration and Succession (Estate of Deceased Persons) Law of Anambra State, as it is now, is that the capacity or the right of a testator to dispose of any property which he may be entitled to at death by will is not restricted or subject to any native or law and custom.". Also in the case of ***Asika & Ors V Atuanya***[50] the court held that a testator has the liberty to dispose[51] of his property in the way and manner he likes and no one can modify the Will. This was equally confirmed in the case of ***John & Ors v. Akhuamhenkhun & Ors***.[52]

However, a testator's freedom under the Wills law is restricted and he cannot dispose of his entire property by way of Will. Lagos and many states enacted Wills law restricting testamentary freedom of testator. For example the Oyo State[53] Limits the testamentary freedom of a testator to dispose of his estate/property if he is restricted by his customary law or Islamic law as the case may be. The Kaduna State[54] Wills law under section 4 restricts the power of a testator. The law, thus; It shall be lawful for every person to bequeath or dispose of, by will executed in accordance with the provisions of this law all property to which he is entitled, either in law or in equity, at the time of his death: provided that the provisions of the law shall not apply-

1. To any property which the testator had no power to dispose of by Will or otherwise under customary law to which he was subject:

[47] *(2021)LPELR 56212 (CA)*
[48] In the East or Anambra in particular
[49] (2014)LPELR 23561 (CA)
[50] (2013) LPELR - 20895 SC:
[51] See Igboidu v. Igboidu (1999) 1 NWLR (Pt.585) p. 27." per NGWUTA, J.S.C (P. 27, PARAS. F - G)."
[52] *John & Ors v. Akhuamhenkhun & Ors* (2021) LPELR 54138 (CA)
[53] Cap 170 Wills Law of Oyo State 2000
[54] Cap 133 Kaduna State 1991.

2. To the Will of a person who immediately before his death was subject to Islamic law

Lagos state also enacted a wills law empowering a testator to make his Will with an enlarged restriction on the testamentary power of a testator to dispose of his property by way of Will. section one. Empowered the testator, thus;

> It shall be lawful to every person to bequeath or dispose of, by Will execute in accordance with the provision of this law, all property to which he is entitled, either by law or equity or at the time of his death Provided the provision of the laws shall not apply to any property which the testator had no power to dispose of by Will or otherwise under customary laws to which he was a subject.

From the above, it is crystal clear that the testamentary freedom of a testator to make a will is only to the extent of satisfying certain conditions and these conditions are what constitute restrictions to the powers of a testator to make a Will under the Will laws. Some of these restrictions are;

Capacity to make a will

The testamentary capacity of a testator means the capacity to make a will and for a testator to make a valid will must have attained the requisite age, possess a sound mental capacity and must not have been influenced or coerced to write the will under any law or customs.[55]

1. **Age.**

In Nigeria, there is no uniformity when it comes to the age capacity of a testator.[56] A testator can make a will if he attains puberty age.[57]. The state that still accommodates the Will Act of 1837 is 21 years while most states in Nigeria are 18 years. The Lagos[58] and Oyo[59] Will law for example stipulated 18 years as the benchmark for will-making. Kaduna State,[60] and Abia[61] Many other states in Nigeria specified 18 years as a valid age for Will making.

[55] Section 3 of Lagos state Will laws. Section of the Will Act of western state 1958.
[56] B. Adetunji, *The law of Succession in Nigeria* (University of Lagos Printing Press, 2019) P 304
[57] For Muslims
[58] Section 3 of the Wills Law of Lagos State
[59] Section 5 Wills edict of Oyo state
[60] Section 6 of the Kaduna state Wills law
[61] Section 4 of Abia state Wills law

However, some of the States[62] make exceptional provision accommodating situations where a Will made by an under 18-year person can be said to be valid. One of the exceptions for example is stated in Section 6 (1) of the Wills Law of Lagos State which provides that any seaman, mariner or crew of a commercial airline being at sea or in the air may dispose of his estate though under the age of eighteen years.

2. Mental Capacity.

Every testator is deemed mentally fit and capable at the time he/she signs the Will. However, if the testator becomes[63] Unsound after signing the Will, the Will remains valid and effective. It is therefore clear that where the testator is unable to meet the essential.[64] Requirements, the will is tantamount to being declared invalid as the testator lacks testamentary capacity and the will not be able to dispose of his property and where the testator had already written one, that might not be admitted in the probate or court. [65]

Testamentary capacity means the legal capacity to make a Will. The law requires that a testator must have a sound disposing mind both at the time of giving instructions and execution. See the case of ***Nola & Ors v Graham-Douglas & anor***[66] where the question before the court was on what constitutes the sound disposing mind of a testator; instance(s) in which a testator will be held to lack it. The court held that "Relying on the evidence before the Court, the learned trial Judge found and held that; "A Will though formally executed may be held to be invalid where the testator does not have sound mind memory and understanding or simply put lacks a sound disposing mind."

In addition, it is important to know that, for a will to become valid and enforceable under the wills laws in Nigeria, the will must be written among other things. Section 4 (1) of the Wills Law of Lagos State states the conditions for the validity of a Will as follows: No Will shall be valid unless-

[62] Section 5 of the Will laws of the western region 1959, applicable in the States that are created out of old western region such as Ondo, Ekiti, Oshun, Delta and Edo. The Oyo State has its own Will law. The applicable in these states is the Will Act of 1837
[63] Non Compos mentis
[64] Ogianien v Ogianien (1967) 1 All NLR. 191
[65] (2014) *Okolonwamu & anor v Okolonwamu & ors* LPELR 22631 (CA)
[66] (20190 LPELR 48285

(a) it is in writing; (b) it is signed by the testator or signed in the testator's name by some other person in the presence and by the direction of the testator, on such place in the will so that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as the testators will; (c) the testator makes or acknowledges the signature in the presence of at least two witnesses present at the same time; (d) the witnesses attest and subscribe the will in the presence of the testator but no form of attestation or publication shall be necessary.

TESTAMENTARY FREEDOM OF A TESTATOR IN GHANA

Ghana[67] is another country of interest when it comes to testate and intestate law of succession because of its patrilineal and matrilineal intrigues. In Ghana maternal side is sometimes more favoured and considered as per the right to inherit from a deceased person is concerned. Unlike in most countries in Africa where the male line solely inherits almost everything[68] when it comes to the distribution, and management of a deceased property. In matrilineal, the man is more connected to his mother than his father[69]. Everything passes from the mother to the children[70] among some tribes in Southern Ghana. While in most of the States in the Northern Part of Ghana are patrilineal where the properties of a deceased person pass through the father. This status to a very large extent affects Will making in Ghana.

Ghana just like any other country has rules and basic requirements for a valid will. The Wills Act of 1971(Act 360) provides for the essential requirements of a valid Will in Ghana. The law also deals with other related matters. In Ghana,[71] to make a Will the testator must not be less than 18 years of age and be of sound mind as at the time of making the Will. The Will must be executed in accordance with the law of where it was made. It must be signed in the presence of two witnesses. A witness to a will cannot be a beneficiary according to Ghana's law except if there are at least two other witnesses. To avoid doubt, it is strongly advised that the beneficiary should not witness a Will.

[67] A. N. Liman, *Islamic Law of Inheritance: A Comparative Perspective*, (Malthouse Lagos, 2018) At P.90
[68] Ibid at P. 74
[69] This is a common practice among the tribes of Ashanti, Bunu, and Akan etc. from the southern Part of Ghana
[70] Ibid
[71] O.B. Gloria, *The Wills Making in Ghana*(Oagelinks LTD, 2016)

The Ghana Wills Act makes provisions similar to that of Lagos and Oyo wills laws giving enormous powers to spouses, children and parents (their dependents) whose Will did not favour approaching the court to express how badly the Will affected them. Section 13 of the Ghana wills of 1971 carried the same provisions.

In Ghana, the testator has the freedom to dispose of all his property by will to anybody of his own choice. No law in Ghana prevents or compels the testator or testatrix to devise his or her properties in a particular manner. By virtue of section one of the Wills Law of Ghana which reads as follows; "Any person of or above the age of eighteen years may in writing and accordance with this Act make a will disposing of any property which is his or to which he will be entitled at the time of his death or to which he may be entitled" this section by implementation and implication connotes to means that the testator is guaranteed to the extent of excluding his spouse, children and parents by disposing of all his property to anybody of his choice.

However, section 13 of the Act allowed dependents of the testator to approach court where the testator did not make reasonable provision for spouses and children under 18 years. Therefore, a testator's freedom to make a will is restricted.[72] to the extent that the testator must not ignore his spouse and children while planning his will, otherwise, the Court will intervene to declare the Will invalid.

TESTAMENTARY FREEDOM OF A TESTATOR IN INDIA.

India is another country of interest because of the zillions of traditional systems and multiple customs and religions that are practised or co-exist in India. The freedom to make a Will in India depends on the State, tribe or religion you believe in. It is important, to know that In India, testamentary disposition is primarily governed by the Indian Succession Act, 1925. The Act[73] provides the legal definition of a will and outlines the requirements for its validity, execution, revocation, and probate

[72] By section 13 of the Ghana's will Act,

[73] https://lawbhoomi.com/testamentary-disposition/#Laws_Governing_Testamentary<accessed 06/01/2024>

Just like, under the Will Act,[74] the will must be in writing, except in cases of privileged wills (e.g., soldiers in actual warfare). The testator must sign or affix their mark on the will in the presence of at least two witnesses, who must attest to the testator's signature or mark. More importantly, the will must not be a product of coercion, fraud, or undue influence.

The India Will Act of 1925 which is still in operation, expressly allowed a testator to dispose of all his property through Will to another person of his own choice, except Muslims[75] and some other specific tribes or communities excluded by specific statutory provisions. For example, a Muslim whose testamentary matters are governed by personal laws. The Muslims are guided by the Quran and Sunnah in India.

However, in India under the 1925 Act, where a Muslim married under the Marriage Act, he has chosen that his inheritance should be governed by the Act, not under the Muslim personal law. Under Muslim law, you cannot write a will above 1/3 of your total estate but under the Indian Succession Act of 1925, the testamentary freedom is one hundred per cent in India.

THE FREEDOM OF A TESTATOR IN ENGLAND

The Will Act of 1837 which was domesticated by many states in Nigeria originated from England. The Will Act gives total freedom to a testator to dispose of his property in a manner and ways he likes, and this is why the English law of succession adheres to the principle of absolute freedom[76] of testation since common law systems have been more reluctant in granting compulsory shares contrary to the will of the testator. Unlike in Italy and other place 'reserved' and 'compulsory' portion for spouse and family has no place. A statutory fixed share does not exist, therefore, under the English common law. The system[77] largely determined by the courts[78] can be described as a discretionary system[79].

[74] 1837

[75] K. Anand, The Concept of Will under Muslim Law: a Study, International Journal of Law and Legal Jurisprudence Studies: ISSN:2348-8212:Volume 4 Issue 3

[76] Section 3 of the Will Act 1837

[77] A. Abdulraham 'Testamentary Freedom and its Restrictions in Civil and Common Law Jurisdictions' file:///C:/Users/liman/Desktop/p.hd%20research/testamentary%20freedom%20in%20u.%20s.%20a.pdf <accessed 4/1/2024>

[78] The England Act of 1938 is also relevant. This Act allows surviving spouses, children, and other dependents to claim a reasonable share of the testator's estate if they are not adequately provided for in the will

[79] A range of persons may apply to the court for a share of the estate

However, where the testator disposed of all his property without living any portion for his spouse and his immediate dependents, the Courts[80] in England have the discretional power under Inheritance (Provision for Family and Dependents) Act 1975 to alter the terms of a will where no provision or inadequate provision has been made for certain categories of person, which are not confined to spouses, civil partners or children: the England Amendment Act also stipulates those entitled to apply to the court for a share of the estate under the Inheritance[81]Act 1975[82] to include; (1) A surviving spouse or civil partner; (2) A former spouse who has not remarried; (3) A child of the deceased 942 (4) Any person who was treated by the deceased as a child of the family in relation to a marriage; (5) Any other person who was maintained wholly or partly by the deceased before his or her death; (6) Any person living in the same household as the deceased as husband or wife or as civil partner during the whole of the two years preceding the date on which the deceased died, where the deceased died on or after 1 January 1996.

It is important to also know, that several reforms were made in England to address zillions of issues of abandonment of spouse and children to their God. For example Section 2 of the Law Reform (Succession) Act[83] amended the Inheritance (Provision for Family and Dependents)[84] Act 1975 and inserted a new s.1(1) (b) into the 1975 Act by providing that in addition to the persons already entitled, s.1(1) would be extended to give any person living in the same household as the deceased as husband or wife or civil partner during the whole of the two years preceding the date on which the deceased died.

From the above, it is crystal clear that all the amended Acts expressly allowed Courts to look inward and give its order based on what is adduced or established before the court and the kind of consequential order the court may grant for the support of the spouse, children etc. The above provision reduced and truncated the testamentary freedom of a testator.

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[80] A. Obiora, *Limits of a testator on Freedom of Will testamen*t https://nigerianlawguru.com/wp-content/uploads/2024/10/LIMITS-OF-A-TESTATOR-ON-FREEDOM-OF-WILL-TESTAMENT. accessed 19/02/2025

[81] Section 2 make Provisions for Family and Dependents protection

[82] A Broun, *Testamentary Responsibility* ' Journal of University of Edinburgh https://www.pure.ed.ac.uk/ws/portalfiles/portal/450085831/BraunELR2024TestamentaryResponsibility. accessed 12/12/2024

[83] 1995

[84] 1975

CONCLUSION

Islamic inheritance system deals with how the estate of a deceased person can be managed, distributed and shared among heirs. Will (bequest) is a branch of Islamic inheritance which deals with how a testator is empowered by the Shariah to dispose of their property. The power of testator(s) to dispose of their property both under the Islamic and Wills laws in Nigeria is not absolute. The testamentary freedom of a testator in Islam is restricted in two major ways. One of which is that a testator is restricted to 1/3 of the estate when making a will and is not allowed to write a Will in favour of their heirs. The Will laws also restrict a testator in many ways and a testator without capacity or sound judgment will not be able to make a valid Will.

The court played a key role in ensuring that the testator adhered strictly to the provisions of the Law whether customary or Islamic law. A Will that does not meet the necessary requirements will always be considered as declared as invalid by the court.

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AN EXAMINATION OF LEGAL PROTECTIONS AND RIGHTS GUARANTEED TO DEFENDANT IN THE NIGERIA CRIMINAL JUSTICE SYSTEM

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Abstract

The Nigerian criminal justice system is designed to uphold the legal protections and rights guaranteed to defendants, as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended) and other relevant statutes. This paper examines the basic rights and protections guaranteed to the defendants which include the presumption of innocence until proven guilty, the right to a fair and public hearing by an impartial Court, the right to legal representation, and protection against self-incrimination. Additionally, defendants are entitled to be informed of the charges against them, to have adequate time and facilities to prepare their defense, and to examine witnesses. It also considers the legal framework safeguarding defendants' rights in Nigeria, The 1999 Nigeria Constitution, The Evidence Act, The Police Act, The Correctional Service Act, Administration of Criminal Justice Act (ACJA) 2015 which introduced significant reforms aimed at reducing delays in trials, preventing arbitrary detention, and promoting respect for human rights. Also, ***Legal Aid Act 2011, Anti-Torture Act 2017, African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983, International Covenant on Civil and Political Rights (ICCPR), Universal Declaration of Human Rights (UDHR)****. It identify some challenges by highlighting the gaps in implementation, overcrowded prisons, prolonged pretrial detention, limited access to legal aid/legal representation, Corruption and Abuse of Power, Judicial Delays, and systemic inefficiencies persist, undermining the full realization of these rights. It thus emphasizes the need for sustained judicial reforms, Strict Enforcement of Human Rights Laws, capacity building, Improved Legal Aid Services and public awareness to ensure that the principles of justice, fairness, and equity are upheld in the criminal justice system.*

Keywords: Examination, Legal Protections**,** Rights, Defendant, Guaranteed, Criminal Justice System.

1.0: INTRODUCTION

This paper considers the various rights accorded defendant under Criminal Justice System. It is a fundamental principle of criminal justice that there should be justice for the State, justice for victim and justice for defendant.The Nigerian criminal justice system is designed to ensure fairness, justice, and protection of individual rights, particularly for defendants. These protections are rooted in the Constitution of the Federal Republic of Nigeria (1999, as amended), various statutes, and international human rights treaties to which Nigeria is a signatory. The system guarantees fundamental rights such as the right to a fair hearing, presumption of innocence, legal representation, and protection from unlawful detention or torture. These legal safeguards aim to prevent wrongful convictions, uphold due process, and maintain public confidence in the judiciary.

The concept of justice is incomplete without adequate protections for those accused of crimes. In Nigeria, defendants are entitled to specific legal rights that ensure fairness in the administration of justice. These rights serve as a safeguard against arbitrary detention, unfair trials, and other forms of injustice. This paper explores the legal framework that protects defendants, including constitutional provisions, statutory regulations, and judicial interpretations.

2.0: FUNDAMENTAL HUMAN RIGHTS ACCORDED CITIZEN IN THE CONSTITUTION

The 1999 Constitution of the Federal Republic of Nigeria is the supreme law of the land.[1] It is the *grund norm* through which all other laws derive their validity.[2]This enactment is crucial to any proceedings be it criminal or civil because it is the supreme law of the land. In fact, the validity of any criminal statute is determined by its consistency with constitutional provisions. Section 1 of the constitution provides: 'This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.'[3] 'If any other law is

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[1] Section 1(1) CFRN, 1999.
[2] Section 1(3) CFRN.
[3] Section 1 CFRN.

inconsistent with the provisions of this constitution, this shall prevail, and that other law shall be to the extent of its inconsistency be void.'[4]

Chapter 4 of the Constitution (that is, Sections 33-46) deals with Fundamental human rights that is applicable to both suspect and other civilians. These rights are political and civil rights. Chapter IV of the 1999 Constitution[5] generously replicates the provision of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). This category of right is guaranteed by the Constitution and their breach can be challenged by the affected individual or group of individuals. This category of rights is regarded as so fundamental that they are only capable of being derogated from only in a situation of war or other public emergency.[6]These rights are examined below:

2.1: THE RIGHT TO LIFE

Right to life is obviously the most fundamental of all human rights.[7] This is because other human rights can only be exercised by a person who is alive. Indeed, all other rights add quality to the life in question and depend on the pre-existence of life itself for their utility.[8] The right to life is also accorded the highest position by those arguing in favour of hierarchy of rights. Even those who do not submit to the hierarchy of rights argument but favour universal fundamentality still consider the right to life as pre-eminent.[9] However, in the Nigerian Constitution, the rights to life is nevertheless subject to the execution of a death sentence of a court of law in respect of a criminal offence of which one has been found guilty.[10] In *Kalu v. the State*,[11] the Supreme Court of Nigeria had to consider the constitutionality of section 30(1) of the 1979 Constitution which is in tandem with section 33(1) of the 1999 upon the argument of counsel to the accused that death sentence was not constitutional. Iguh, J.S.C. observed as follows:

[4] Section 3 CFRN.
[5] Chapter iv, CFRN, 1999.
[6] Steve F, *Human Rights & Civil Liberties*, (2nded England: Pearson Education Ltd, 2008)72.
[7] Section 33 (1) CFRN, 1999 and Article 4 of the African Charter of Human and People's Rights.
[8] Peter A, Atudiwe 'Judicial Review and Enforcement of Human Rights: The Red Pencil and Blue Light of the Judiciary of Ghana' (LL.M Thesis, Queen's University, Ontario Canada, 2008) 41.
[9] Smith Rhona K.M, *Textbook on International Human Rights* (Oxford: Oxford University Press, 2007) 194.
[10] Section 33 (1) CFRN, 1999.
[11] (1998) 13 NWLR (pt. 583) 531.

> Under section 30 (1) of the 1979 Constitution, the right to life, although fully guaranteed, is however subject to the performance of a court of law in respect of a criminal offence of which one has been found guilty in Nigeria. The qualifying word "save" used in the section seems to be the unique key to the structure of the provision. Thus, it is basic that the 1979 Constitution can by no spring of the mind be said to have forbidden or barred the death consequence.[12]

However, it should be pointed out that where the constitutional provision relating to right to life is not qualified, it might be impossible for a court to impose a death sentence.[13] Although, the Constitution authorizes killing in execution of a sentence of a court,[14] it must be emphasized that killing in execution of a sentence of a court could only be justified under the provision where there is no pending appeal.[15] Thus, pending appeal operates as stay of execution see ***Gani Fawehinmi v State*[16] and *Ozubulu v State*.[17]**

2.2: RIGHT TO DIGNITY OF HUMAN PERSON

The right to dignity of the human person is guaranteed by the Constitution.[18] It provides that dignity of all persons shall be inviolable. The effects of this section is that under no circumstance shall any person be subjected to torture whether or not he is arrested; that people not yet convicted shall not be kept with convicts; that juvenile offenders who are kept in lawful detention or custody shall be kept separately from adult offenders; that slavery and servitude are outlaw; and that no person shall be subjected to forced labour. [19]The legal bearing of this section is the affirmation of the sanctity elements of the human person.[20] This right has been violated both by government and

[12] *Okoro v. The State* (1988) 5 NWLR (pt. 94) 255.

[13] *The State v.Makwanyane& Others* (1995) 6 BCLR 665; (1995) SACLR Lexis 218 where the Constitutional Court of South Africa held that the death penalty sentence violated the constitutional protection relating to right to life and freedom from cruel, inhuman and degrading treatment.

[14] Section 33 (1) CFRN,1999.

[15] *Bello v. A.G. Oyo State* (1986) 5 NWLR (pt. 45) 828.

[16] (1990) 1 NWLR (Pt 127) 486.

[17] (1981) 2 NCR 680.

[18]Section 34 (1) CFRN, 1999, see also Article 5 on the African Charter.

[19]Salman Kolawole Raheem, The Effectiveness of Nigerian National Human Rights Commission in Human Rsights Protection' (Ph.D Thesis, International Islamic University Malaysia 2011) 53.

[20]Peter A. Atudiwe, '*Judicial Review and Enforcement of Human Rights: The Red Pencil and Blue Light of the Judiciary of Ghana*' (LL.M Thesis, Queen's University, Ontario Canada, 2008) 44.

individuals in Nigeria and as such, the courts have intervened at different times. Thus, while vulgar abuse has been said not to contravene rights to dignity,[21]torture,[22] on the other hand has been held to be a violation of the right.[23] The right to dignity of person is most commonly violated in Nigeria in relation to detainees and prisoners. Detainees in Nigeria are subjected to all manners of torture, inhuman and degrading treatment, in some cases with the purpose of extracting confessional statement from them.[24] Thus, the Nigeria Court had recently held that the State has a responsibility to ensure that a person under detention or custody is not to be put in undue danger of his health and safety.[25]See also ***Ubani v Director of State Security Services***.[26]

2.3: RIGHT TO PERSONAL LIBERTY

The Constitution equally guarantees this right.[27] The term 'liberty' used in its general term refers to basic principles of autonomy and freedom. One is free to do what one chooses and the right protects individual from state interference as to what to do, with whom to associate and what choice one make with respect to life. It may also refer to freedom of movement and freedom from detention of the person, usually by the State.[28] The word 'liberty' as used in this section could be literally or restrictively construed. For example, Nigerian court adopted liberal interpretation and held that closure of private schools amounted to interference with liberty of parents to train their children as they deem fit.[29] With respect, it is submitted that the section and Article 5 of the African Charter contemplate physical restraint against individual and not otherwise.[30] The restrictive

[21]*Uzoukwu v Ezeonu* II (1991) 6 NWLR (pt. 200) 708.

[22]Torture is defined by UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as "any act by which sever pain or suffering, whether physical or mental, is intentionally inflicted on the person for such purpose as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when pain or suffering s inflicted by or the instigation of or with the consent or acquiescence of a public official or other person action in an official capacity" (Article 1 United Nations Convention Against Torture (1984).

[23] *Mogaji v. Board of Custom and Excise* (1982) NCLR 552 at p. 561; see *Alaboh v. Boyles* (1984) 3 NCLR 830.

[24] *Peter Nemi v. A.G. Lagos State* (1996) 6 NWLR (pt. 452) 42.

[25] *Fawehinmi v. Abacha* (1996) 5 NWLR (pt. 447) 198.

[26] (1999) 11 NWLR (Pt 625) 129

[27] Section 35 (1) CFRN,1999; see Article 6 of the African Charter .

[28] Steve F, *Human Rights & Civil Liberties* 220.

[29] *Adewale v. Jakande* (1982) NCLR 262.

[30] Nwabueze B.O, *The Presidential Constitution of Nigeria* (London: C. Hurst & Company, 1982) 421.

interpretation is adopted by the European Court.[31] The Court emphasizes that Article 5, which is in consonance with section 35 of the Nigerian Constitution, is not concerned with restriction on mere liberty but on the physical liberty of the person.

Although, in some circumstances, the right of liberty can be deprived[32] but such deprivation of liberty in those circumstances must be in accordance with the procedure laid down by law. The most commonly abused of the stipulated limitations on the right is sub-section 1 (c) which authorizes deprivation of a person's liberty upon suspicion of his commission of an offence or to prevent one from committing an offence. [33]The Police had, on many instances used this sub-section to arrest many victims on account of suspicion. The Police often arrest relatives of the suspects perpetually or until when such shows up. This attitude has been decried by the Court in the case of A.C.B. v. Okonkwo[34]where Niki Tobi, J.C.A. said:

> I know of no law which allows the police to arrest a mother for an offence done or purportedly done by son. Criminal obligation is personal and cannot be reassigned…. A police officer who detained 'A' for the offence committed by 'B' should know that he has performed against the law. Such a police officer should in addition to burden in civil action, be disciplined by the police authority.[35]

A provision to section 35 (1) is to the effect that a person who is charged with an offence and who has been detained in lawful custody awaiting trial should not be in custody perpetually or longer than the maximum period of imprisonment prescribed for the offence.[36] The purpose of putting a person under detention to be brought before a court within a reasonable time is to enable the Court to decide whether or not to order his release.[37] In order to discourage unnecessary arrest and detention, the Constitution provides the payment of compensation and public apology from the

[31] *Guzzardi v. Italy* (1980) 3 EHRR 333.
[32] Section (35) (1) (1) – (f) CFRN, 1999.
[33] Salman Kolawole Raheem, The Effectiveness of Nigerian National Human Rights Commission in Human Rights Protection' 53.
[34] (1997) 1 NWLR (pt. 480) 194.
[35] Ibid.
[36] Section 35 (4) CFRN, 1999.
[37] Nwabueze B. O, *The Presidential Constitution of Nigeria* 425.

appropriate authority or person where it is proved that a person has been unlawfully arrested and detained.[38]

2.4: RIGHT TO FREEDOM OF THOUGHT AND CONSCIENCE

The Constitution provides for right to freedom, thought, conscience and religion.[39] This right is very important in a country like Nigeria where the level of enlightenment is very high. To have failed to assure freedom of thought would have created a lot of chaos in the society. The same could be said of the right to freedom of conscience. With respect to religion, it needs be observed that this section is very essential particularly because of the religious divides between the Christians and Muslims or between various sects of the same faith. It is also important in view of the unresolved controversy of whether or not Nigeria is a secular country. This is because some are of the opinion that Nigeria is a secular state[40] while others have argued otherwise.[41] The Nigerian courts are yet to make any pronouncement in this respect. What is however clear under *Shari'ah* is that it is an apostasy and prohibition for a Muslim to change his religion to another.[42] The Constitution has also assured the right to manifest and propagate one's religion or belief in worship, teaching, practice and observance. The Supreme Court, while determining the constitutionality of the refusal of a patient to have blood transfusion on account of the fact that he was a member of Jehovah's Witness observed:

> The right to freedom of thought, conscience or religion implies a right not to be prohibited, without lawful excuse, from selecting the course of one's life, shape don what one trusts in, and a right not to be disallowed without justification,… The sum total of the rights to privacy and of liberty of thought, conscience or religion which individual has, put in a nutshell, is that one should be left alone to choose a course of his life, unless a clear and compelling overriding state interest validates the country.

[38] Section 35 (4)CFRN, 1999 See also *Joseph Odogwu v A.G Federation* (1996) 6 NWLR (pt. 456) 508.
[39] Section 38(1) 1999 CFRN, see Article 8 of the African Charter for similar provision.
[40] Osita N.O, *Human Rights Law and Practice in Nigeria: An Introduction* (Enugu: CIDJAP Press,1999) 174.
[41] Justice Bashir Sambo 'Nigeria is Never a secular State' *Guardian* Newspaper, (Nigeria, Monday 15 March, 1999) 16.
[42] For detail analysis of the meaning, concept and offence of Apostasy in *Shari'ah* see Shamrahayu Binti Ab. Aziz, *Legal Measures Regulating Offences against Islam in Malaysia*, (Ph.D. Thesis, International Islamic University Malaysia, 2007).

> The law's role is to ensure the fullest of liberty when there is no danger to public interest. Ensuring liberty of conscience and freedom of religion is a vital element of that fullness.[43]

Other part of section 38 which are derivatives of the basic provisions is section 38(1) of the 1999 Constitution in section 38(2) of the Constitution. By this provision, a person cannot be compelled to take part in any religious worship, instruction, ceremony or observance where any of these have not been voluntarily acceded to. This sub-section is not restricted to schools. It is equally applicable to community, locality or tribe. Thus, in Theresa ***Onwo v. Oko***,[44] the applicant was a born-again Christian and a member of the Assemblies of God. Her husband who was not a born-again Christian died and she claimed that the respondents (her husband's family) forcefully and against her will shaved her head, assaulted her grievously, striped her naked, locked her up in a room and removed all her property in order to conform to the tradition of the community of mourning the dead. The appellant contended that according to her religion and her own faith, she does not mourn the dead. Consequent upon shaving her head forcefully, she commenced the action, claiming that her right of freedom of religion has been violated.

Two major principles of law emerged from the Supreme Court decision in this case. One, it is now settled that where a person does not believe in a particular religion or practice of a particular sect or religion, such a person cannot be compelled to take part in the observance or ceremony of such belief. Where such person is forced to participate in the ceremony of such belief or observe the tenet of such belief, his right under section 38 (2) has been violated. Secondly, where an individual, group of individual or organisation violates the rights of another person, such another person can initiate proceeding against an individual, group of individual or organisation that has violated his rights under Chapter IV of the 1999 Constitution.[45] This settles the erroneous argument that enforcement of violation of human rights can only be instituted against government or its agents. It is now clear that enforcement can be against individual, group of individuals or government and its agents.

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[43] *Medical and Dental Practitioners' Disciplinary Tribunal v Okonkwo,* (2007) 7 NWLR (pt. 711) 206

[44] (1996) 6 NWLR (pt. 456) 612.

[45] *Agbai v. Okogbue* (1991) 1 NWLR (pt. 204) 391.

2.5: RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS

Freedom of expression and the press are guaranteed in the Constitution.[46] Freedom of expression has been described as one of the most essential foundations of a democratic society.[47] This reflects the fact that the promotion of freedom of expression is not only justified on grounds of liberty, but is also capable of achieving public benefits.[48] Thus, section 39 is seen not only as essential to the person exercising that right, but also as supporting the democratic process through the promotion of a free press and the public's right to information and the encouragement of open and responsible government.[49]The basic idea behind freedom of expression is that it involves the imparting and receiving of information and ideas. Thus, freedom of expression consists of the manifestation, via communication of that information and does not cover every autonomous action of individual. Freedom of expression is one of the fundamental concepts that have formed the basis for the historical development of political, social and educational institutions of the Western society.[50] This concept is regarded as "a vital means for seeking and attaining truth.[51] The importance of freedom of expression is summarised as (a) a necessity for the discovery of truth; (b) an aid to the growth of democracy; and (c) a useful tool for individual self-fulfillment.[52] See Festus ***A.O. Ogwuche v. Federal Republic of Nigeria (2016) ECW/CCJ/JUD/05/16*** where The ECOWAS Community Court of Justice held that imposing regulations that censor or impede the freedom of expression of defendants violates their rights. The case emphasized the need for a fair trial and the protection of individual liberties.

[46] Section 39 (1) & (2) CFRN, 1999; see Article 10 African Charter.

[47] *Handyside v. United Kingdom* (1976) EHRR 737; see Beatson G and W. Gripps (eds.) Freedom of *Expression and Freedom of Information; Essays in Honour of Sir David Williams* (Oxford; Oxford University Press, 2002); Barendt G, Freedom of Speech (2ndedn) (Oxford; Oxford University Press, 2005); and Fenwick W and J. Phillipson *Media Freedom under the Human Rights Act* (Oxford ; Oxford University Press, 2006) .

[48] Steve, F, *Human Rights & Civil Liberties* 352.

[49] Barendt B, *Freedom of Speech* (2nded) (Oxford; OUP, 2005) 78.

[50] Peter A, Atudiwe, *'Judicial Review and Enforcement of Human Rights: The Red Pencil and Blue Light of the Judiciary of Ghana*' 86 quoting the Canadian Supreme Court in the case of *RWDSU v. Dolphin Deliver Ltd* (1986) 2 S.C.R 573 at 583.

[51] Ibid.

[52] Ibid.

The second leg of the section specifically deals with the freedom of the Press.[53]Press is a vehicle for the dissemination of information and ideas and can be seen as fulfilling the role of 'public watchdog' and vehicle for individual and public criticism of the government and other public bodies.[54] In line with this, the Court held in ***Tony Momoh v. Senate***[55] that the applicant has the right to disseminate information through media and that disclosure of sources of his information could violate his right of expression through media. However, because the Press provides mass coverage of information of ideas and because it is capable of influencing individual and public opinion, it is inevitable that it can cause greater harm if the speech that it transmits is indeed harmful. For this reason, the right to freedom of expression and the Press which includes right not to disclose one's source of information may be curtailed by section 45 of the 1999 Constitution on account of the interest of defence, public safety, public order, public morality or for the purpose of protecting the rights and freedom of other persons.[56]

2.6: RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION

This is provided for by the 1999 Constitution.[57] This section deals with right of any person to willingly belong to any society or association with any person including any union or political party in the pursuit of his interest. Freedom of assembly and association is a necessary part of the democratic process. Democracy is essentially concerned with identifying and satisfying yearning, feelings and aspiration of individuals and group. People ventilate their feelings and desires through demonstrations and by forming interest group. Furthermore, the freedom of expression and the right to freedom of religion, thought and conscience, may be exercised in concert with others only if there is freedom of assembly and association.[58]

[53] Section 39 (3) CFRN, 1999.
[54] Robertson N, *Media Law* (London: Sweet & Maxwell, 2002) 22 .
[55] (1984) 4 NCLR 269; The Court adopted and maintained the same position in the case of *Adikwe v Federal House of Representative* (1982) 3 NCLR 394.
[56] The informed various tortuous and penal laws restricting the right to freedom of expression and the Press; e.g. Sedition Act, Defamation Law. *Nwanko v. The State* (1985) 6 NCLR 228; *DPP v. Chike Obi* (1961) All NLR 186.
[57] Section 40 CFRN, 1999 and Article 11 of the African Charter.
[58] Osita N.O, *Human Rights Law and Practice in Nigeria: An Introduction* 191.

The right is often violated by the government and employers against their employees in Nigeria. The courts have had opportunities to make useful pronouncement in such situations. Thus, the courts have affirmed that the section protects two basic rights; freedom of association with others, including the right to join a trade union,[59] and the right to peaceful assembly.[60] The right as provided under this section is, of course, a conditional right and as such, restrictions may be placed on the exercise of those rights, provided they are prescribed by law and necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

2.7: RIGHT TO FREEDOM OF MOVEMENT

The right to freedom of movement is guaranteed by the Constitution.[61] This section asserts the modern phenomenon relating to fluidity of movement of person. The boundary lines of states no longer determine the extent to which one can go in pursuit of his social, economic, cultural, and religious or any other interests. With this section in place, any citizen of Nigeria can reside and move freely in any part of Nigeria without any hindrance.[62]

Section 38 of the 1979 Constitution, which is in *pari material* with section 41 of the 1999 Constitution, received similar judicial interpretation in the case of ***Federal Minister of Internal Affairs v. Shugaba.***[63] The Plaintiff was a majority leader at the Borno State House of Assembly who was purportedly deported by the Minister of Internal Affairs on the ground that he was not a Nigerian. The Court held that the deportation was an infringement of his freedom of movement guaranteed under section 38 of the Constitution. In the case of ***Director of State Security Service v. Agbakoba,***[64] the Supreme Court held that seizure of respondent's passport amounts to denial of right of freedom of movement. The Supreme Court further held that freedom of movement

[59] *Anigboro v. Sea Trucks (Nig) Ltd* (1995) 6 NWLR (pt. 399) 35.

[60] *Agbai v Okogbue* (1991) 1 NWLR (pt. 204) 391, ; See also *Aniekwe v Okereke* (1996) 6 NWLR (pt. 452) 60; *Rimi v People's Redemption Party* Suit N. M/133/80 of 23/12/90.

[61] Section 41, CFRN, 1999; see Article 12 of the African Charter for similar provision.

[62] *Williams v.Majekodunmi* (1962) 1 All NLR 410; see also *Adegbenro v. A.G. Federation* (1962) All NLR 423.

[63] (1982) 3 NCLR 915.

[64] (1999) 3 NWLR (pt. 595) 314 ; also the courts have held similar position in *Ubani v. Director of SSS* (1999) 11 NWLR (pt. 625) 129; *Akunnia v. A.G. Anambra State* (1977) 5 SC 161; *Tukur v. Government of Gongola State* (1989) 4 NWLR (pt. 117) 517; *A.G. Federation v Ajayi* (2000) 12 NWLR (pt. 682) 509.

includes right to hold passport to ease ingress and egress of Nigerians. Thus, seizure of passport is a denial of freedom of movement which violates section 41 of the 1999 Constitution. However, in deserving circumstances, this right may be curtailed and a person may be removed from Nigeria to be tried elsewhere if there is bilateral or reciprocal agreement with the government of such elsewhere.

Finally, it needs be stated that the Constitution places restrictions and derogation on the fundamental rights as provided in the Constitution.[65] Thus, section 45 of the Constitution is a cautionary section with respect to Chapter IV of the Constitution dealing with fundamental rights. The legal implication of this section is that, in appropriate circumstances, the rights recognised in Chapter IV may be derogated from on account of defence, public order, public morality or public health or rights and freedom of other persons.[66]

3.0: RIGHTS ACCORDED TO THE DEFENDANT UNDER THE VARIOUS LEGAL FRAMEWORKS

3.1: THE 1999 NIGERIA CONSTITUTION

The Constitution as the *grund norm* has made some basic provisions to ensure smooth running of the administration of criminal justice administration in Nigeria. The justification for these provisions is to ensure fair and speedy trial in the administration of criminal justice in Nigeria. The right to fair and speedy trial is one of the most fundamental tenets of constitutional democracy.[67] It is with the means of fair trial that citizens appreciate the rights guaranteed in the Constitution which if not, may make citizens to resort to other means to protect their interest.[68]This leaves us in no doubt that all criminal proceedings must be done in manners that do not conflict with constitutional provisions. In specific cases, the Constitution makes provisions for the protection of certain rights. For example, the whole of Chapter 4 of the Constitution (that is, Sections 33-46)

[65] Section 45 CFRN, 1999.
[66] Olawoyin v. A.G, Northern Nigeria (1961) 1 All NLR 269.
[67] Section 36(4) CFRN.
[68] Oyeyipo T.A, 'Professional misconduct problems and solutions' (Paper presented at the 2003 Annual General Conference of the Nigerian Bar Association 20 Aug. 24-29, 2003 also Hambali Y.D.U, *'Practice and Procedure of Criminal Litigation in Nigeria,* 2012 feat Print and Publish Ltd Lagos 12.).

that deals with fundamental rights must not be detracted from in any circumstance (except in certain situations which the Constitution itself acknowledges) and much more fundamentally,

3.1.1: **RIGHT TO FAIR HEARING:**

Section 36 of the 1999 Constitution of Nigeria guarantees every individual accused of a crime the right to a fair hearing within a reasonable time by a competent, independent, and impartial court. This ensures that defendants receive due process and a chance to present their case. fair hearing which is the crux or bedrock of all criminal trials. Chapter IV of the Constitution provides for the fundamental rights which an accused must enjoy from the point of his arrest to the point of his conviction or acquittal. The administration of justice is at the core of any successful democracy in the world.[69]This makes the Court a vital institution in the administration of criminal justice in Nigeria. The essence of the various guaranteed constitutional rights are to safeguard and assure a fair and speedy trial which covers all stages of judicial proceedings, though fair and speedy trial does not necessarily begin and end with court proceedings.[70] For instance, in criminal trials, it starts with arrest and continues until the final disposition of cases either at the court of first instance or appeal court.[71] See O***guebie v. Federal Republic of Nigeria (2019) LPELR-46580(CA)*** where The Court of Appeal held that detaining an accused person for an extended period without trial violates their right to a fair hearing within a reasonable time, as enshrined in the Constitution.

3.1.2: PRESUMPTION OF INNOCENCE:

Under Section 36(5) of the Constitution, every defendant is presumed innocent until proven guilty. This principle prevents authorities from treating accused persons as criminals before conviction. See ***State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621*** where the judgment emphasized that treating an accused person as guilty before a formal conviction undermines the integrity of the justice system.

3.1.3: RIGHT TO LEGAL REPRESENTATION:

[69] Oyeyipo T.A, 'Professional misconduct problems and solutions' 2.
[70] Section 36(4) CFRN, 1999.
[71] Section 36(1) &36 (4) CFRN.

Defendants have the right to be defended by a lawyer of their choice. If a defendant cannot afford legal counsel, the Legal Aid Council of Nigeria (LACN) provides free legal representation, particularly for indigent persons. See ***Gani Fawehinmi v. Nigerian Bar Association (1989) 2 NWLR (Pt. 105) 558*** where. The Supreme Court held that denying a defendant access to counsel of their choice constitutes a violation of their constitutional rights. See also ***Labaran Magayaki & Ors v. The State (2003)***

3.1.4: PROTECTION AGAINST SELF-INCRIMINATION:

Under Section 36(11) of the Constitution, no defendant can be compelled to testify against themselves, ensuring that confessions or testimonies are given voluntarily. See ***Ezekiel Adamu v. State (2017) LPELR-41434(CA)*** where the court ruled that any confession not made voluntarily is inadmissible in court.

3.1.5: RIGHT TO BE ARRAIGN IN COURT WITHIN REASONABLE TIME:

Section 35(4) See ***Adebayo v Attorney General of Ogun State (2008) 14 NWLR (PT 406) 97*** Where the Court of Appeal held that the detention of the applicant for 32 days without trial was a violation of his right to fair trial within reasonable time. Also see ***Abiola v. Federal Republic of Nigeria (1995) 7 NWLR (Pt 406) 97*** .Where the Supreme Court held that the detention of the Applicant for eighteen months without trial was a violation of his right to fair trial within reasonable time.

3.1.6: PROTECTION FROM TORTURE AND INHUMAN TREATMENT:

The Anti-Torture Act 2017 and Section 34 of the Constitution prohibit the use of torture, inhuman, or degrading treatment during investigations and interrogations.

3.1.7: RIGHT TO BAIL AND FREEDOM FROM ARBITRARY DETENTION:

Section 35(4) of the Nigeria Constitution. The defendants have the right to bail, especially in cases where the offense is not capital in nature.

3.1.8: RIGHT AGAINST ARBITRARY ARREST OR DETENTION:

Arbitrary Arrest and detention without trial violates constitutional rights and can be challenged in court. See ***Ojukwu v. Military Governor of Lagos State (1985) 2 NWLR (Pt. 10) 806.*** Where The Supreme Court in this case emphasized that law enforcement agencies must adhere strictly to legal procedures when arresting and detaining individuals. Arbitrary arrests without due process were deemed unconstitutional.

3.1.9: RIGHT TO BE INFORMED OF CHARGES:

Every accused person has the right to be promptly informed of the charges against them in a language they understand. This ensures that they can prepare an adequate defense.

3.1.10: RIGHT TO ADEQUATE TIME AND FACILITIES FOR DEFENSE:

See ***Torri v. National Park Service of Nigeria (2011) LPELR-8253(SC)*** where The Supreme Court held that an accused person must be given adequate time and facilities to prepare their defense. Denying this right constitutes a breach of the principles of fair hearing.

3.1.11: PROTECTION AGAINST DOUBLE JEOPARDY:

Section 36(9) of the Constitution ensures that no person shall be tried or punished twice for the same offense once they have been acquitted or convicted.

3.1.12: POWERS OF ATTORNEY-GENERAL;

sections 174(1) and 211(1) of the Constitution which provide for the powers of the Attorney-General of the Federation and the Attorney-General of a State respectively to institute, take over and discontinue criminal proceedings in any court in Nigeria other than court-martial.

3.1.13: PREROGATIVE OF MERCY;

Sections 175 and 212 of the Constitution empower the President and the Governor of a State respectively to exercise their Prerogative of Mercy in favour of any person concerned with or convicted of any offence created by an Act of the National Assembly or any Law of a State as the case may be.

3.2: RELEVANT PROVISIONS FOR THE PROTECTION OF DEFENDANT IN THE EVIDENCE ACT 2011 CAP E 14

This is one of the legislations which, though not wholly dealing with criminal proceedings, in part make provisions regulating criminal matters and the conduct of criminal proceedings in Nigeria. The Evidence Act of 2004[72] was repealed and replaced with a new Evidence Act of 2011 which applies to all judicial proceedings in or before Courts in Nigeria. It is a vital law in the administration of criminal justice. Its provisions determine a lot of issues relating to evidence in civil and criminal matters. It is divided into sixteen (16) parts. Part I (sections 1-3) deals with general issues on evidence; part II (sections4-13) deals with relevancy; part III (sections 14-36) deals with relevance and admissibility; part IV (sections 37-82) deals with hearsay evidence, expert opinion, character evidence, relevance and admissibility; part V(sections 83-120) treats documentary evidence; part VI (sections121-124) covers proof; part VII (sections125-127) relates to oral evidence and the inspection of real evidence; part VIII (sections128-130) deals with exclusion of oral by documentary evidence; part IX (sections131-144) makes provisions for production and effect of evidence; part X(sections145-174) discusses presumptions and estoppel; part XI (sections175-204) deals with witnesses; part XII (sections205-247) deals with taking of oral evidence and examination of witness; part XIII (sections248-250) deals with evidence of previous conviction; part XIV (section 251) deals with wrongful admission and rejection of evidence; Part XV (sections252-254) is on service and execution throughout Nigeria of process to compel the attendance of witnesses before courts of the states and the Federal Capital Territory, Abuja; and part XVI (sections 255-258) deals with miscellaneous and supplementary provisions.

The following are some selected provisions from the Evidence Act that borders on criminal justice administration.

3.2,1: Burden of Proof:

The general rule is that the party who is asserting the existence of any fact in issue carries the burden of proving them which will be the prosecution in criminal case.[73]

3.2,2: Presumption of Innocence in favour of the accused person:

[72] Evidence Act Cap. E 14 LFRN 2004.
[73]Section 131 Evidence Act.

Presumption is defined as a conclusion which may or must be drawn from a given set of facts until contrary is proved.[74]There are two types of presumptions namely: Presumption of Law and Presumption of Fact.

3.2.3: Presumption of Law:

A presumption of law is one which is prescribed by law and which must be drawn in the absence of any evidence to the contrary.[75]Presumptions of law are divided into two: Rebuttable Presumption of Law and Irrebutable Presumption of Law.

3.2.4: Presumption of Fact (Fact Presumed):

A presumption of fact is one which is dependent upon logical reasoning or which a court is free to draw if it so likes.[76]

3.2.5: Confessional Statement:

Confession is defined as an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.[77].

3.2.6: Corroboration:

This is defined as a confirmation of a witness's evidence by independent testimony. In criminal justice administration, the general rule is that, no particular number of witnesses is required for the proof of any fact. A person can be convicted of any offence on the Oath of a single adult witness.[78]However, corroboration may occur as a matter of law or as a matter of practice. Corroboration as a matter of law are such circumstances that are provided by law that requires corroboration before admitting such evidence. Example of such instances is breach of promise to marriage.[79]No plaintiff shall succeed in this action unless his testimony is

[74]Section 145 (2) Evidence Act.
[75]Section 145 Evidence Act.
[76] Section 145 (2) Evidence Act.
[77] Section 28 Evidence Act ; also *Gira v. State* (1996) 4 NWLR) {PT 443} 375 S.C.
[78] *Shorumo v. State* (2011) ALL FWLR (Pt 421) 797.
[79] *Wilcox v. Jeffrey* (1872) 26 L.T. 48.

corroborated.[80]For Treason and Treasonable Offences, the Evidence Act[81] provides that no person charged with treason or with any felonies mentioned in sections 40 - 42 of the Criminal Code shall be convicted except in his own plea of guilty or on the evidence in open court of two witnesses, at least to one overt act of the same kind of treason or felony alleged, or the evidence of one witness to one overt act and one other witness to another overt act of the same kind of treason or felony. In ***R v.Omisade***,[82] the Supreme Court held that it is not necessary that a witness must be able to testify to an overt act in its entirety but it is sufficient if a number of witnesses give evidence of snippets, which add up to proof of an overt act.[83]

3.3: Police Act 2020

The Police Act was enacted in 1943 and re-enacted by a decree in 1967 with only aesthetic changes[84] and now finally repealed in 2020.[85]The Act makes provision for the organisation, discipline, powers and duties of the Nigerian Police. The main functions of the Police as stipulated in the Act are: to take measures to prevent crime, to investigate crime, to prosecute suspects, to search properties and persons in order to prevent crimes, detect or investigate crimes, apprehend offenders, and collect evidence for prosecution.[86] The power of the Police to prosecute criminal cases up to Supreme Court was affirmed in the case of ***Federal Republic Nigeria v.Osahon***.[87]Police officers whether lawyer or not has the power under section 23 of the Police Act to prosecute criminal cases at the Magistrate Court. The fundamental question is whether the provision of section 106 of ACJA overrides the provision of section 23 of the Police Act which empowers the Police to prosecute criminal cases. This will be addressed in due course. The Code is substantially remnants of colonial legislations and traditions and amendments have failed to effect a Nigerian-specific outline on criminal legislation.

3.4: Correctional Service Act 2019

[80] Section 197 Evidence Act.
[81] Section 201 (1) Evidence .Act.
[82] (1964) NMLR 67.
[83] *Enahoro v. R*. (1965) 1 NMLR 265.
[84] Osasona T, 'Time to Reform Nigeria's Criminal Justice System' 2.
[85] Police Act (Repeal and re enactment Act 2020).
[86] Sections 4, 23 &25 Police Act generally.
[87] (2006) 5 NWLR (Pt. 973) 87.

President Muhammadu Buhari signed into law the Act amending the name of the Nigerian Prisons Service (NPS) to Nigerian Correctional Service (NCS).[88]

The President's assent which was announced by his aide on National Assembly matters, Ita Enang, on August 14, 2019 which came 11 years after the bill was first presented before the National Assembly and 19 years since proposals for reform of the country's prisons were made. The bill was first presented before the Senate in January 2008 by former member of the Senate, Victor Ndoma-Egba, and was read a second time in 2010. The Senator had then argued that if passed into law, the bill would address some of the fundamental lapses inherent in the Prisons Act, stressing that a review of the Act was necessary to put in place a framework for the rehabilitation and transformation of inmates and to address the issue of inadequate funding of prisons.[89] The Act consists of the Custodial and Non-custodial Services. The Custodial Service, among other roles takes custody and control of persons legally interned in safe, secure and humane conditions, conveying remand persons to and from courts in motorised formations. The Non-Custodial Service on the other hand has to do with the administration of non-custodial measures like community services, probation, parole, restorative justice measures and such other measures as a court of competent jurisdiction may order.

The Act also provides for restorative justice measures which includes victim-offender mediation, family group conferencing, community mediation and other conciliatory measures as may be deemed necessary at pre-trial, trial, during imprisonment or even post- imprisonment stages, conducting risk and needs assessment aimed at developing appropriate correctional treatment methods for reformation, rehabilitation and reintegration, implementing reformation and rehabilitation programmes to enhance the reintegration of inmates back into society, initiating

[88] Azu J.C, 'Major implications of Nigeria's new Correctional Act' Published Aug 20, 2019 available at https://www.dailytrust.com.ng/major-implications-of-nigerias-new-correctional-act.html accessed on 7 February 2020.

[89] Fidelis Mac-Leva Joshua Odeyemi& John Chuks Azu (Abuja), Itodo Daniel Sule (Lokoja) and Victor Edozie, 'Nigeria's prisons remain same despite name change' (Port Harcourt) Published October 23, 2019. https://www.dailytrust.com.ng/nigerias-prisons-remain-same-despite-name-change.html https:accessed on 7 February 2020.

behavior modification in inmates through the provision of medical and psychological, spiritual and counseling services for all offenders including violent extremists.[90]

Agomoh[91] observes that the first thing in Section 2(1) (a) - (d) of the Act is to ensure that the operations of the Nigerian Correctional Service is in tandem with international human rights practices, meaning it will be in compliance with the United Nations standard minimum rate for the treatment of prisoners known as the Mandela Rules; and that it will be in tandem with the Bangkok Rules, which deals with women.

The Act further provides that where an inmate sentenced to death has exhausted all legal procedures for appeal and a period of 10 years has elapsed without execution of the sentence, the Chief Judge may commute the sentence of death to life imprisonment. The Act also makes provision for the development of educational and vocational skills training programmes and facilitating incentives and income generation through custodial centers, farms and industries and providing support to facilitate the speedy disposal of cases of persons awaiting trial amongst others.[92] Section 12 of the Act empowers the State Controller of the Service to reject more intakes of inmates where it is apparent that the correctional centre in question is filled to capacity.

In an ideal situation, improvement of facilities through funding and reorienting the psyche of personnel working in the service ought to have been given priority ahead of simply changing the name of the service from NPS to NCS. Some officers observed that directorates in the service ought to have been expanded to accommodate the non-custodial aspect of the NCS operations. It was gathered that inmates are still kept in the prisons even though the new Act provides that some of them with minor offences would have had their punishments converted to parole or other non-custodial measures.[93]

As at June, 2020, the total number of prisons inmates in Nigeria stands at 74,081. Findings showed that there are 72,662 male inmates and 1,419 female inmates. Of the total figure, 22,390 male and

[90] Ibid.

[91] Agomoh U, New prison law will improve Nigeria's human rights record, save money – Agomoh, prison reformer. https://www.sunnewsonline.com/new-prison-law-will-improve-nigerias-human-rights-record-save-money-agomoh-prison-reformer/ACCESSED 8 October 2021.

[92] Fidelis Mac-Leva, Joshua Odeyemi& John ChuksAzu (Abuja), Itodo Daniel Sule (Lokoja) & Victor Edozie.

[93] Ibid.

311 female prisoners had been convicted. There are 51,380 prisoners that are awaiting trial in various prisons across the country.[94]

3.5: Administration of criminal justice Act (ACJA)

There were serious agitations for overhauling of the laws regulating criminal justice system specifically as regards the enabling laws due to the fact that the two principal criminal laws had become outdated. The agitations concerned both the substantive and procedural criminal codes. This led to the setting up of various reforms commissions and committees by succeeding governments and finally in 2015, they came up with Administration of Criminal Justice Act of 2015. This Act aims to ensure the efficient management of criminal justice institutions, speedy dispensation of justice, and protection of the rights of suspects and defendants in Nigeria. ACJA 2015 merged the provisions of both the Criminal Procedure Act and the Criminal Procedure Code into one and provides for a coordinated law for the whole country's criminal justice administration. Although, at first the Act was only applicable to Federal Court. The Administration of Criminal Justice Act, 2015 (ACJA) is one of the recent laws in Nigeria and it is without doubt extensive in its applicability and innovativeness in nature. The Act which came into being in May 2015 has 495-sections and divided into 49 parts relating to the administration of criminal justice and connected matters in the courts of the Federal Capital Territory and other Federal Courts in Nigeria. It is important to note that since the enactment of ACJA, each state of the federation has followed suit with eventual domestication. The ACJA is significant by integrating the major provisions of the two major criminal justice laws in Nigeria that is Criminal Procedure Act and Criminal Procedure Code. It preserves the prevailing criminal processes while introducing modern provisions that will improve the efficiency of the justice system and help fill the inadequacies identified in these laws over the course of several decades. Nigeria now has a single and integrated procedural criminal law applicable in all federal and state courts, with respect to offences contained in Federal and State Legislations.[95]

[94] Ibid.
[95] Section 2. ACJA.

It is to be noted that the whole of the Act aim at protecting parties to criminal cases , notably among the beneficial sections for the protection of defendant include:

a. Right to be informed of the reason for arrest: Section 6(2) A.C.J.A.2015.
b. Right to remain silent: Section 7 A.C.J.A.2015.
c. Right to Counsel: Section 6(3) A.C.J.A.2015.
d. Right to be brought before a court: Section 8 A.C.J.A.2015.
e. Right to bail : Section 165-173 A.C.J.A.2015.
f. Right to a Fair trial: Section 1 A.C.J.A.2015.
g. Right to Confrontation: Section 215 A.C.J.A.2015.
h. Right to an Interpreter: Section 21 A.C.J.A.2015.
i. Right to Appeal: Section 241 A.C.J.A.2015.
j. Protection from Torture and ill treatment: Section 8 A.C.J.A.

3.6. Legal Aid Act 2011:

This legislation establishes the Legal Aid Council, which provides free legal services to individuals who cannot afford legal representation, ensuring that indigent defendants have access to justice. The Act aims to: Ensure access to justice for all, particularly the vulnerable and marginalized. It provides legal assistance to those who cannot afford it and Promote fairness and equality in the justice system. The Legal Aid Council of Nigeria was established by the then Head of the Federal Military Government, General Olusegun Obasanjo on 10th November 1976 through Act No. 56 of 1976. The provisions of the Legal Aid Act was brought into force by Dr. Augustine Nnamani J.S.C., the then Attorney General of the Federation on the 2nd day of May, 1977.Over the years, the decree had been amended and later codified (except the 1994 amendment) into what is now known as Legal Aid Act. Cap 205, Laws of the Federation of Nigeria. The LAC 2001 Act repealed

the 1976 LAC Act.[96]It went through two amendments, and finally, in 2011, an Act was signed by President Goodluck Jonathan. Among the services rendered by Legal Scheme include claims damages for breach of fundamental human rights as guaranteed by the Constitution. The Decree was amended by the Legal Aid Act Cap L9, Law of the Federation, 2004 and to conform to the current democratic dispensation, the Law was repealed in 2011 by the Legal Aid Act 2011.[97]

The initiation began with the trio of Chief Timothy ChimizieIkeazor, SAN, Chief Adebowale Durosaiye Akande, SAN, and Chief Dr Solomon Daushep Lar, SAN. CON. They formed the Association of Public Defenders (later the Legal Aid Association of Nigeria) in the early 1970s. Their objective was to provide *probono*legal services to indigent, economically deficient and less privileged Nigerians.[98]

Legal Aid Council of Nigeria is a federal body under the supervision of the Federal Ministry of Justice. The Council has its headquarters in Abuja, conducts its operations through offices in 36 states, 6 zonal offices, Legal Aid Centres (14 for now) in Local Government Area Councils in some States and the Federal Capital Territory as part of the drive to establish legal aid offices in all the 774 Local Government Areas of the Federation.[99]

It renders free legal aid and access to justice to indigent persons as widely as possible within its financial resources.[100]. The body provides legal aid to individuals or firms, whose human rights

[96] Legal Aid Council of Nigeria , 'Giving Voice to the voiceless' ,<http://www.legalaidcouncil.gov.ng/index.php?option=com_content&view=article&id=156:world-bank-report-on-acj-project-in-kaduna-state&catid=43:latest-news&lang=en> accessed on 17 June 2016.

[97] Abdulkadir A, 'LIFE BEGINS @ 40": The Story of Legal Aid Council of Nigeria' 1, <http://www.autoreportafrica.com/life-begins-40-story-legal-aid-council-nigeria>/ accessed on 17 March 2017.

[98] Ibid.

[99] Ibid.

[100] Ibid.

have been threatened or violated, provides free legal advice to the citizens and also individual legal assistance to those who cannot afford but need it. Counsels are designated to different states to provide free legal services to the indigent across the country. It has been recognised that no meaningful development can ensue without the simultaneous availability of access to legal services that can be utilised to enforce all generations of rights and thus ensure the empowerment of all persons in the society. Springing from this premise, the concept of access to justice has attained the status of a right in the society today as it promotes establishment of a legal culture that contributes to development processes.[101]

The vision of the founding fathers of the Legal Aid Council was to see a new Nigerian nation where there is equal access to justice for all, irrespective of means and where all Constitutional rights are respected, protected and defended to ensure justice for all. This is reflected in its motto which is 'Giving Voice to the Voiceless' while the Mission Statement is 'To remain the leading and pro-active provider of free, qualitative and timely legal aid services in Nigeria, ensuring social justice and the emancipation of the oppressed, reprieve to the weak and vulnerable thereby giving voice to the voiceless.'

The Council is not without challenges. Ayorinde[102] is of the view that the Council is faced with challenges of poor funding and logistics which is really affecting the efforts of the Council's staff members.[103]Abdulkadr[104] argues that it is only now that the Council is having its own building as headquarters while a visit to some of its states' offices shows that it needs one aid or the other. The

[101] **Abdulkadir A,** 'LIFE BEGINS @ 40": The Story of Legal Aid Council of Nigeria'25
[102] Ayorinde Bolaji SAN is the former Chairman of the Governing Board of the Legal Aid Council.
[103] Ayorinde to *Newswatch Times* Newspaper in Abdulkadr A,
[104] Abdulkadr Ahmad Ibrahim former member of the Governing Board of the Legal Aid Council.

staff are either being moved randomly from one building to another by their host state governments or are provided with office accommodation in remote areas; while in some cases, tables, chairs and other office furniture at these state offices are better imagined than seen. Ordinary stationeries are sometimes provided by indigent litigants. Official vehicles of the Council are in a state of despair in some of the states' offices and where available. The monthly financial grant to cover recurring costs of maintenance and utilities among others from the headquarters was no longer regular[105].

3.7: ANTI-TORTURE ACT 2017:

The Anti-Torture Act 2017 was passed by the 8th National Assembly and signed into law by President Mohammadu Buhari on 29th December 2017.This Act criminalizes the use of torture by law enforcement agencies and ensures that confessions or statements obtained through torture are inadmissible in court. It prohibits torture and other forms of cruel, inhuman, or degrading treatment or punishment. The act defines torture as intentionally inflicting pain or suffering, physical or mental, to obtain information, punish, intimidate or coerce someone. The Act aims to promote human rights and dignity and its effective implementation is crucial to preventing torture in Nigeria. However, there is concern that the Act's implementation has been slow and no perpetrator has been punished under the Act yet.

3.8: African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983:

By incorporating the African Charter into domestic law, Nigeria commits to upholding the rights and freedoms enshrined therein, including fair trial rights. It is a Nigerian law that ratifies the African Charter on Human and Peoples' Rights. It Incorporates the Charter into Nigerian law. And provide a framework for enforcing human rights provisions. It thus has the following Implication: It aligns Nigerian law with regional human rights standards, enhances protection of human rights

[105] Abdulkadr A, **'**LIFE BEGINS @ 40": The Story of Legal Aid Council of Nigeria'

in Nigeria and allows individuals to invoke Charter provisions in Nigerian courts. The Act demonstrates Nigeria's commitment to regional human rights frameworks and promotes accountability for human rights protection.

3.9: International Covenant on Civil and Political Rights (ICCPR):

As a signatory, Nigeria is bound to uphold the rights outlined in the ICCPR, which include various protections for defendants in criminal proceedings. It is a key international human rights treaty adopted by the United Nations General Assembly in 1966. It came into force in 1976 and has been ratified by a large number of countries worldwide. The ICCPR is a cornerstone of international human rights law and plays a crucial role in promoting and protecting civil and political rights globally. The Key Provisions include: The ICCPR outlines a broad range of civil and political rights, as follows: Right to life: States parties must protect the right to life and ensure that no one is arbitrarily deprived of their life. Freedom from torture: The Covenant prohibits torture, cruel, inhuman, or degrading treatment or punishment. Freedom from arbitrary arrest and detention: Individuals have the right to liberty and security of person, and arbitrary arrest or detention is prohibited. Right to a fair trial: The ICCPR guarantees the right to a fair and public trial, with access to legal representation and the presumption of innocence until proven guilty. Freedom of expression, assembly, and association: The Covenant protects the rights to freedom of expression, peaceful assembly, and association. Protection of minority rights: States parties are required to protect the rights of minorities, including their right to enjoy their own culture, practice their religion, and use their language.The ICCPR is monitored by the Human Rights Committee (HRC), a body of independent experts who review reports submitted by States parties on their implementation of the Covenant. The Committee also considers individual complaints (communications) from individuals who claim their rights under the ICCPR have been violated.

3.10: Universal Declaration of Human Rights (UDHR):

While not legally binding, the UDHR sets out fundamental human rights principles, including the right to a fair trial, which influence Nigeria's legal framework. The Universal Declaration of Human Rights (UDHR) is a foundational document of modern human rights, adopted by the

United Nations General Assembly in 1948. It sets out fundamental human rights and freedoms, universal and inalienable, to be enjoyed by all. The UDHR comprises 30 articles, encompassing: Civil and political rights: life, liberty, security, freedom from slavery, torture, and arbitrary arrest. Economic, social, and cultural rights: work, social security, education, healthcare, and cultural participation. Equality and non-discrimination: equal rights for all, without distinction. The UDHR is significant in that it establishes human rights as universal and inalienable, Inspires national and international human rights law and guides governments, organizations, and individuals. The UDHR has Shaped international human rights law and treaties, Influenced national constitutions and laws, as well as Promoted human rights awareness and advocacy.The UDHR remains a cornerstone of human rights, inspiring efforts to protect and promote dignity, equality, and justice worldwide.

4.0: CHALLENGES TO EFFECTIVE IMPLEMENTATION OF RIGHTS AND PROTECTION OF DEFENDANT IN THE NIGERIAN CRIMINAL JUSTICE SYSTEM

Despite these legal protections, several challenges hinder their full implementation, including:

a. Corruption and Abuse of Power: Corrupt practices always lead to prolonged detention , denial of bail and miscarriage of justice Law enforcement agencies sometimes violate defendants' rights, leading to wrongful detentions and torture.
b. Judicial Delays: The slow pace of judicial proceedings. Cases often take years to be resolved due to inefficiencies in the court system.
c. Limited Access to Legal Representation/legal aid: Many indigent defendants lack access to quality legal representation despite the existence of legal aid.
d. Police Brutality and Unlawful Detention: Cases of extrajudicial killings and forced confessions continue to undermine defendants' rights.
e. overcrowded prisons and
f. systemic inefficiencies persist,

5.0: RECOMMENDATIONS FOR STRENGTHENING DEFENDANTS' RIGHTS

These recommendations aim to strengthen defendants' rights, promote fairness, and ensure justice. To enhance the protection of defendants' rights in Nigeria, the following measures should be taken:

Ensure timely access to legal representation: Provide defendants with prompt access to lawyers and adequate time to prepare their defense.

Improve bail procedures: Reform bail systems to ensure fairness, transparency, and consideration of individual circumstances.

Enhance access to justice: Ensure defendants have a fair and impartial trial, with adequate interpretation services and accessibility accommodations.

Strict Enforcement of Human Rights Laws: Holding law enforcement agencies accountable for rights violations.

Public Awareness Campaigns: Educating citizens about their rights to prevent abuses.

Improved Legal Aid services by expanding access to free legal representation for indigent defendants.

Protect against coerced confessions: Strengthen safeguards against torture, duress, and coercive interrogation techniques.

Improve appeals processes: Streamline appeals procedures, ensuring timely and fair review of convictions and sentences.

Provide rehabilitation and reintegration support: Offer defendants opportunities for rehabilitation, education, and reintegration into society.

Promote judicial independence and accountability: Ensure an independent judiciary, with mechanisms for accountability and oversight.

Foster a culture of respect for human rights: Encourage a culture of respect for defendants' rights among law enforcement, judiciary, and other stakeholders.

Increase transparency and accountability: Implement measures to track and address systemic issues, such as wrongful convictions.

Provide training and capacity-building: Offer training for law enforcement, judiciary, and lawyers on defendants' rights and best practices.

6.0: CONCLUSION

Legal protections for defendants are crucial for maintaining the integrity of Nigeria's criminal justice system. While the country has made progress in enacting laws that safeguard these rights, enforcement remains a significant challenge. A commitment to judicial reforms, accountability in law enforcement, and increased public awareness can help ensure that every defendant in Nigeria

receives a fair trial. This paper commences by examining the fundamental human rights accorded in the constitution. it went further to examine various legal framework and basic rights and protections guaranteed to the defendants, it also considers the Challenges to effective Implementation of rights and protection of defendant in the Nigerian Criminal Justice System, it provides Recommendations for Strengthening Defendants' Rights and Conclusion.

ARTIFICIAL INTELLIGENCE IN LEGAL EDUCATION: PERCEPTIONS OF EASE OF USE AND USEFULNESS OF CHATGPT AMONG UNDERGRADUATE LAW STUDENTS OF AHMADU BELLO UNIVERSITY, ZARIA

Sadiq Buhari Bello,* Muhammad Sani Abdurrahman and Umar Sani Bebeji*****

Abstract

The use of Artificial Intelligence Chatbot, Chat Generative Pre-trained Transformer (ChatGPT) has gained popularity among students. This study used a descriptive survey design as the research was interested in both the idea and attitudes of respondents to explore the perceptions of ease of use and usefulness of the ChatGPT among undergraduate Law students of Ahmadu Bello University, Zaria, in their academic activities. The global integration of AI into various sectors, including education and law profession has shown it's potential to transform the professional practices, and also raises concerns about job displacement and the overall impact on human interactions. The study employs the Technology Acceptance Model (TAM) to evaluate the students' perceptions, focusing on the variables of perceived usefulness and perceived ease of use. A total of 1,799 Law students constitute the population of the study, while simple random sampling technique was adopted to obtain sample size. Data was collected through both printout and online Google form questionnaire to obtain data from the respondents. Also research questions were answered using descriptive statistics (Mean and Standard Deviation-SD) using a decision mean value of 2.50. The results showed that the majority of the students (74.45%) are aware of ChatGPT, even though, its level of usage varies significantly among them. However, the perceived ease of use of ChatGPT among the students was a generally positive. Furthermore, the students perceived ChatGTP usefulness as moderately in their academic tasks. This suggest its potential for broader application into both legal education and other academic fields.

***Keywords**:* Perceived ease of use, perceived usefulness, artificial intelligence (AI), ChatGPT,

1. INTRODUCTION

The artificial intelligence (AI) has experienced advancement in the recent years, with a potential of influencing several aspects of human social interactions, ranging from its integration into the field of education, legal system, finance and its capacity to transform those fields. It also gives rise to fears regarding the possibility of job displacement.[1] In March 29, 2023 a Pakistan judge,

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Mohammad Amir Munir, presiding over Phalia court in Punjab province, conduct an experiment to test the capability of AI in judicial system by using GPT-4 for a court decision, making it the first time a legal decision has been made in the country with the help of a chatbot.[2] The GPT was used as tool to ask legal questions about a case and whether a juvenile accused of a criminal offence could be entitled to post-arrest bail. He concludes that if judges were to develop relationship with the chatbot applications like ChatGPT or Google Bard (Gemini), and set precise questions to it based on available trained data, facts and circumstances of a case, it could help by reducing the burden on the human judicial mind through summarizing bulk drafts, providing relevant and dependable response. Similarly, in October, 2023 the Brazilian 36-member Porto Alegre city council successfully voted to pass a bill written by ChatGPT.[3] Even though in the same year there are some recorded instances of lawyers citing fake cases generated using chatbots.[4] A bill titled "An Act drafted with the help of ChatGPT to regulate generative artificial intelligence models like ChatGPT," introduced by Senator Barry R. Finegold and co-sponsored by Senator Adam Gomez, seeks to ensure the responsible use of large-scale generative AI by mandating ethical standards, data protection, transparency, and registration requirements for companies operating such models [5]. This act highlights the growing recognition of AI's role in society and the legal system, demonstrating its potential to assist in drafting laws while ensuring public safety. Its relevance to the legal system lies in its dual role as both a regulated tool and a resource, showcasing AI's utility in policy-making, compliance enforcement, and enhancing efficiency in legal processes.

AI has emerged as a significant development in the field of education, with its potential to generate

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[1] Sadiq Buhari Bello et al., "A Historical Analysis and Pedagogical Implications of Artificial Intelligence and Chatbots," in *Proceedings of the International Conference on Computing and Advances in Information Technology (ICCAIT 2023)* (Zaria, 2023), 21–23.

[2] Sana Jamal, "Pakistani Judge Uses ChatGPT to Make Court Decision," *ASIA/Pakistan Gulf News*, last modified 2023, accessed July 22, 2024, GPT/Pakistani judge uses ChatGPT to make court decision _ Pakistan – Gulf News.htm.

[3] María Luisa Paúl, "A Brazilian City Passed a Law about Water Meters. ChatGPT Wrote It," *The Washington Post*, last modified 2023, accessed July 22, 2024, GPT/Porto Alegre city council passes the first AI-drafted law in Brazil - The Washington Post.htm.

[4] Michael Cross, "AI Hallucinates Nine 'Helpful' Case Authorities," *The Law Society*.

[5] Barry R Finegold and Adam Gomez, *An Act Drafted with the Help of ChatGPT to Regulate Generative Artificial Intelligence Models like ChatGPT* (Massachusetts: Honorable Senate and House of Representatives of the Commonwealth of Massachusetts' General Court, 2023).

innovative teaching and learning approaches.[6] [7] The historical origin of chatbots may be traced back to the early days of artificial intelligence (AI) research. In the year 1950, Alan Turing put up the proposal of the Imitation Game as a potential alternative to the question *"can machine think?"*. However, it was further described that a ChatterBot as a robot of Tinymud player primarily designed to engage in conversation to which the name Chatbot was originated.[8] Chatbot was define as a technological tool that integrates artificial intelligence (AI) and natural language processing, allowing it to engage in text or voice-based conversations with human users to a certain extent.[9] In contemporary times, chatbots, referred to as conversational agents, conversational tutors, or simply bots, are increasingly being utilised throughout a wide range of scientific domains.[10]

ChatGPT is an artificial intelligent chatbot model trained by OpenAI using Reinforcement Learning from Human Feedback (RLHF) in November 2022, which can interact in a conversational manner and can also respond to a follow-up questions.[11] The GPT stands for Generative Pre-trained Transformer, with different versions of ChatGPT.[12] GPT-4o was the current latest version ChatGPT released on 13 May, 2024 and was design towards more natural human computer interaction. It can accept input of both image, audio and text. Similarly, it can generate an output of both image, audio and text.[13] It became the fastest-growing consumer software application in history with over 100 million users in just three months.[14]

OpenAI also introduce ChatGPT-Edu which was design for universities to responsibly leverage Chatbots to students and educators. ChatGPT-Edu falls under ChatGPT-4o categories with a

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[6] Norbert Annuš, "Chatbots in Education: The Impact of Artificial Intelligence Based ChatGPT on Teachers and Students," *International Journal of Advanced Natural Sciences and Engineering Researches* 7, no. 4 (2023): 366–370, https://as-proceeding.com/index.php/ijanser/article/view/739.

[7] UNESCO, *Artificial Intelligence in Education: Challenges and Opportunities for Sustainable Development* (Paris, 2019), https://unesdoc.unesco.org/ark:/48223/pf0000366994.

[8] Bello et al., "A Historical Analysis and Pedagogical Implications of Artificial Intelligence and Chatbots."

[9] José Quiroga Pérez, Thanasis Daradoumis, and Joan Manuel Marquès Puig, "Rediscovering the Use of Chatbots in Education: A Systematic Literature Review," *Computer Applications in Engineering Education* 28, no. 6 (2020): 1549–1565.

[10] P. K. Bii, J. K. Too, and C. W. Mukwa, "Teacher Attitude towards Use of Chatbots in Routine Teaching," *Universal Journal of Educational Research* 6, no. 7 (2018): 1586–1597.

[11] OpenAI, "Introducing ChatGPT," last modified 2022, accessed July 16, 2024, https://openai.com/index/chatgpt/.

[12] GPT-3.5, GPT-4 and GPT-4o are versions of ChatGPT, with each offering increased performance, reasoning capability and efficiency. GPT-4o being the most advanced, optimised for faster and multimodal interactions.

[13] OpenAI, "OpenAI for Education OpenAI," last modified 2024, accessed July 16, 2024, https://openai.com/index/introducing-chatgpt-edu/.

[14] Raghu Raman et al., "University Students as Early Adopters of ChatGPT : Innovation Diffusion Study," *Human Behavior and Emerging Technologies* (2024): 1–32.

special feature of reasoning across text and vision, advanced tools for data analysis, web browsing, and document summarisation.[15] The ChatGPT-Edu was built due to the success rate of ChatGPT Enterprise recorded by institutions like University of Oxford, University of Texas at Austin, Columbia University, Arizona State University and Wharton school of the University of Pennsylvania. It also has a feature and ability to design a custom versions of ChatGPT, it can be shared publically and support over 50 languages.[16] However, many tertiary institutions around the globe were introducing specific regulations on usage of ChatGPT in academic works.[17]

Furthermore, in the field of adoption of technology, Technology Acceptance Model (TAM) proposed by Davis in the year 1986 is one the most commonly and widely use theory due its simplicity and understanding ability. According to Taherdoost[18], TAM comprises of two dependant variables; perceived usefulness and perceived ease of use. However, the variables that can influence system use can be determine by the extent to which people use or not use a technology depends on their believe that the particular application can assist them to perform their work better. Similarly, the prospective user needs to believe that the application is not difficult to use.

According to Bashar, Muhammad and Bello[19], perceived usefulness is the extent to which a person has a believe that adopting a particular application would improve their work performance. Similarly, he defines perceives ease of use as the extent to which a person considers that using a specific application would be easy or free of effort. Therefore, in case of similar application the easier to use application will be more likely to be accepted by prospects. This topic is significant because law students were known by their engagement with bulky texts that requires critical thinking. Identifying their user acceptance is important for any technological implementation and continue use. To assess information system users' acceptability, researchers have created many models, such as the Technology acceptability Model (TAM) model. The TAM model was claim

[15] (OpenAI, 2024a)
[16] Ibid.
[17] Artur Strzelecki et al., "Acceptance and Use of ChatGPT in the Academic Community," *Education and Information Technologies*, no. 0123456789 (2024), https://doi.org/10.1007/s10639-024-12765-1.
[18] Taherdoost (2018)
[19] Abubakar Bashar, Muhammad Sani Abdurrahman, and Sadiq Buhari Bello, "Meta-Analysis on the Effect of Perceived Usefulness and Perceived Ease of Use of Zoom Classroom in Teaching and Learning Among Nigerian Institutions of Higher Learning," *Journal of Mathematical Sciences & Computational Mathematics* 5, no. 1 (2023): 90–103.

to incorporates perceived usefulness and perceived ease of use, is considered while building an ICT.[20] Perceived usefulness is further defined as the extent to which a person thinks that utilizing a certain system would be able to enhance their performance and productivity at work. Furthermore, perceived ease of use is a technique that is used as a standard for people who think particular technology is simple to understand and utilize.[21] Therefore, technology acceptance model (TAM), stipulates that perceived usefulness and perceived ease of use are fundamentals of determining technology acceptance or rejection. This paper aims to investigate the level of awareness and usability of ChatGPT among undergraduate law students at Ahmadu Bello University, Zaria (ABU, Zaria). Additionally, the study intends to examine the perceived usefulness and perceived ease of use of ChatGPT among the undergraduate law students in the institution. However, both the developers and educational stakeholders can use the identified factors of perceived usefulness and perceived ease of use towards improving it to adopt complex legal language and legal writings towards leveraging it into legal education. ChatGPT can be useful in providing quick access to legal information and summarizing them by allowing the law students to have more time for deep learning and critical thinking.

2. METHODOLOGY

A descriptive survey research design was used for this study, as the research was interested in both the idea and attitudes of respondents.[22] The population of this study are all the undergraduate law students of Ahmadu Bello University, Zaria as shown in Table 1. A multi-stage simple random sampling technique was employed in selecting the samples of the study as the selected approach allows representativeness of the population.[23]

Table 1: Population and samples of the study

S/N	Students' level	Population of the study	Samples selected
1	100	246	43
2	200	381	67

[20] Ibid.

[21] Alaa M Momani and Mamoun M Jamous, "The Evolution of Technology Acceptance Theories," *International Journal of Contemporary Computer Research (IJCCR)* 1, no. 1 (2017): 51–58.

[22] Muhammad Abdurrahman Sani, *Introduction to Research Methodology and Statistics: A Guide for Students & Supervisors* (Zaria: ABU Press Ltd. Ahmadu Bello University, Zaria, 2017).

[23] Mustapha I. Abdullahi, *Basic Concepts in Educational Research* (Kaduna: Sunjo A.J Global Links LTD, 2015).

3	300	356	63
4	400	400	71
5	500	416	73
	Total	**1,799**	**317**

The instrument used for the study was a 4-point Likert-scale questionnaire labelled "perceived usefulness and perceived ease of use of ChatGPT questionnaire" comprising of 17-items. Experts confirmed the content validity of the instrument. Data were collected through both printout and online Google form questionnaire, being a 4-point Likerst-scale questionnaire, a decision mean value of 2.50 was used. Mean and standard deviation (SD) were used in answering the research questions.

3. ANALYSIS AND RESULTS

RQ1: What is the level of awareness and usability of ChatGPT among undergraduate law students in ABU Zaria?

Table 2: Level of awareness of ChatGPT among undergraduate law students in ABU, Zaria

S/N	Items	Responses	Percentage (%)
1	Yes	236	74.45
2	No	50	15.77
3	Maybe	31	9.78
	Total	**317**	**100%**

Table 2 shows the level of awareness of ChatGPT among undergraduate Law students in ABU, Zaria. The majority of the students (75.45%) are aware of ChatGPT. A smaller percentage of students are either not aware (15.77%) or uncertain (9.78%) about their awareness of ChatGPT. The result is further elaborated and presented in Figure 1 below:

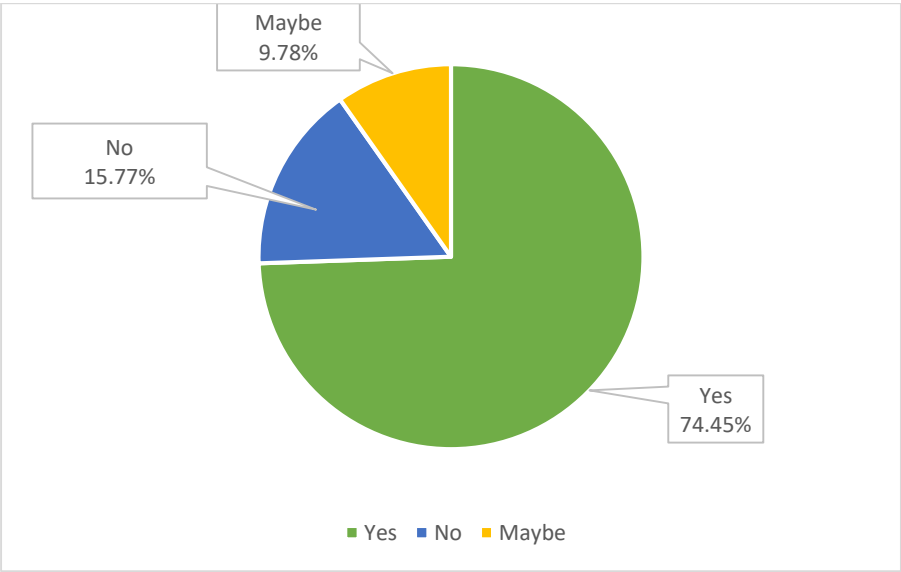

Figure 1: Level of awareness of ChatGPT among undergraduate law students

Table 3: Level of usability of ChatGPT among undergraduate law students in ABU Zaria

S/N	Items	Responses	Percentage (%)
1	Daily	28	8.83
2	Several times a week	73	23.03
3	Once a week	48	15.14
4	Rarely	124	39.12
5	Never	44	13.88
	Total	**317**	**100%**

Table 3 indicates the level of usability of ChatGPT among undergraduate Law students in ABU, Zaria. Only 8.83% of the students use ChatGPT daily, while 23.03% use it several times a week. A smaller group of students (15.14%) use it once a week. The largest group, 39.12%, use ChatGPT rarely, and 13.88% of the students have never used it. This shows a varied level of usage among the students, with the majority either rarely using or not using ChatGPT at all. The result is further elaborated and presented in Figure 2 below:

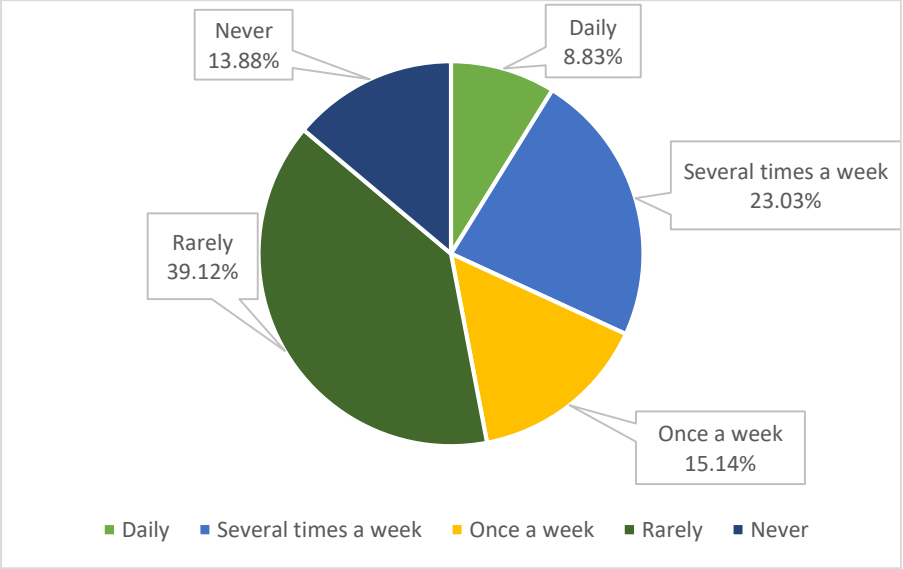

Figure 2: Level of usability of ChatGPT among undergraduate law students

RQ2: What is the extent of perceived usefulness of ChatGPT among undergraduate law students in ABU Zaria?

Table 4: Perceived usefulness of ChatGPT among undergraduate law students in ABU, Zaria

S/N	Items	Mean	SD	Decision
1	My academic task would be difficult to perform without ChatGPT	2.37	0.82	Rejected
2	Using ChatGPT in my work would enable me to accomplish tasks more quickly	3.07	0.64	Accepted
3	Using ChatGPT improves my academics performance	2.82	0.74	Accepted
4	The ChatGPT addresses my school curricular-related needs	2.68	0.69	Accepted
5	Using ChatGPT reduces the time I spend on unproductive activities	2.77	0.76	Accepted
6	Using ChatGPT would make it easier to do my curricular activities.	2.94	0.64	Accepted
7	Overall, I find the ChatGPT system useful in my curricular activities	2.96	0.80	Accepted
	Overall mean Accepted if mean score is ≥ 2.5	**2.80**	**0.73**	**Accepted**

Table 4 shows the perceived usefulness of ChatGPT among undergraduate Law students in ABU, Zaria. The respondents indicated a moderate level of difficulty in performing academic tasks without ChatGPT (Mean=2.37; SD=0.82). The overall mean of perceived usefulness of ChatGPT

among the students was 2.80 (SD=0.80), indicating a generally positive perception of ChatGPT's usefulness. The result in Table 4 demonstrates that the overall mean scores (2.80) of all items is above the 2.50 benchmark.

RQ3: What is level of the perceived ease of use of ChatGPT among undergraduate law students in ABU Zaria?

Table 5: Perceived ease of use of ChatGPT among undergraduate law students in ABU, Zaria

S/N	Items	Mean	SD	Decision
1	Learning to operate ChatGPT would be easy for me	3.19	0.60	Accepted
2	I would find it easy to get ChatGPT to do what I want it to do	3.08	0.63	Accepted
3	My interaction with ChatGPT would be clear and understandable	3.10	0.65	Accepted
4	I would find ChatGPT to be flexible to interact with	3.09	0.65	Accepted
5	It would be easy for me to become skilful at using ChatGPT	3.02	0.77	Accepted
6	Overall, I find the ChatGPT system easy to use	3.23	0.63	Accepted
	Overall mean Accepted if mean score is ≥ 2.5	**3.12**	**0.66**	**Accepted**

Table 5 above shows that the respondents generally perceive the ease of use of ChatGPT positively. Overall, the mean score for the perceived ease of use of ChatGPT among undergraduate Law students in ABU, Zaria is 3.12 (SD=0.66), suggesting a generally positive perception. The result in Table 5 demonstrates that the overall mean scores (3.12) of all items is above the 2.50 benchmark.

4. DISCUSSION OF RESULTS

The data presented in Table 2 indicates a high level of awareness of ChatGPT among undergraduate law students at ABU, Zaria, with 74.45% of students acknowledging their awareness. However, a minor percentage, 15.77%, indicated they were not aware of ChatGPT, and another 9.78% were uncertain about their awareness. The high level of awareness shows that ChatGPT has gained significant recognition among the student population, which align with the findings of Strzelecki et al.[24] This is likely due to its growing presence in academic and

[24] Strzelecki et al. (2024)

technological discussions.[25] This awareness is essential for the adoption of technological tools into educational settings as it forms the foundation for subsequent acceptance and utilization.

However, Table 3 shows a diverse level of usage of ChatGPT among the students. Minor percentage (8.83%) use ChatGPT daily, a larger group (23.03%) use it several times a week. Notably, 39.12% of students reported using ChatGPT rarely, and 13.88% have never used it. This difference in usage frequency could be attributed to varying levels of awareness with AI tools, perceived usefulness, or confidence in using such technologies.[26] The data suggests that while awareness is high, regular usage is limited, possibly due to some barriers such as lack of training or anxiety about the privacy and reliability of AI-generated content. Further studies are needed to identify these possible barriers.

Furthermore, as shown in Table 4, students perceived ChatGPT usefulness as moderately in their academic tasks, with an overall mean score of 2.80 (SD=0.73). They agreed that ChatGPT helps them accomplish tasks more quickly (Mean=3.07; SD=0.64) and also improves academic performance (Mean=2.82; SD=0.74). Nevertheless, the perceived usefulness in addressing school curricular-related needs and reducing time spent on unproductive activities was moderate (Mean=2.68; SD=0.69 and Mean=2.77; SD=0.76, respectively). These findings of the study was in line with Mensah & Daniel[27], Sallam et al.[28], Abdaljaleel et al.[29] The recognition of ChatGPT has potential to enhance efficiency and performance but also gives room for further studies to point out areas where its integration could be improved to meet specific academic needs more effectively.

[25] Ahnaf Chowdhury Niloy et al., "Computers and Education : Artificial Intelligence Why Do Students Use ChatGPT ? Answering through a Triangulation Approach," *Computers and Education: Artificial Intelligence* 6, no. September 2023 (2024): 100208, https://doi.org/10.1016/j.caeai.2024.100208.

[26] Benicio Gonzalo et al., "Analysis of College Students ' Attitudes toward the Use of ChatGPT in Their Academic Activities : Effect of Intent to Use , Verification of Information and Responsible Use," *BMC Psychology* (2024): 1–18, https://doi.org/10.1186/s40359-024-01764-z.

[27] Bonsu Emmanuel Mensah and Baffour-Koduah Daniel, "From the Consumers ' Side : Determining Students ' Perception and Intention to Use ChatGPT in Ghanaian Higher Education," *Journal of Education Society & Multiculturalism* (2023): 1–29.

[28] Malik Sallam et al., "ChatGPT Usage and Attitudes Are Driven by Perceptions of Usefulness , Ease of Use , Risks , and Psycho-Social Impact : A Study among University Students in the UAE," *Research Square* (2024): 1–17.

[29] Maram Abdaljaleel et al., "Factors Influencing Attitudes of University Students towards ChatGPT and Its Usage : A Multi-National Study Validating the TAME-ChatGPT Survey Instrument," *Preprints.org* (2023).

Similarly, Table 5 demonstrates a generally positive perception of ChatGPT's ease of use among students, with an overall mean score of 3.12 (SD=0.66). Students found learning to operate ChatGPT relatively easy (Mean=3.19; SD=0.60) and believed it would be easy to get it to perform desired tasks (Mean=3.08; SD=0.63). The interaction with ChatGPT was perceived as clear and understandable (Mean=3.10; SD=0.65), and ChatGPT was considered flexible to interact with (Mean=3.09; SD=0.65). However, becoming skilful at using ChatGPT had a slightly lower mean score (Mean=3.02; SD=0.77), indicating some challenges in mastering the tool. Overall, these findings suggest that while students find ChatGPT easy to use, these findings are consistent with Abdaljaleel et al.[30] There is room for further support and training to enhance their skills and confidence in using the AI chatbots and ChatGPT in particular.

5. CHALLENGES OF AI USAGE AMONG STUDENTS

Despite the high level of awareness and positive perception of ease of use and usefulness among law students, Nigeria has no standalone AI law as of 2024, is actively developing its AI regulatory strategies. The National Information Technology Development Agency (NITDA) and relevant agencies were drafting a National Artificial Intelligence Policy (NAIP) and have issued a National AI Strategy (NAIS). In August, 2024 the federal government unveiled a draft of NAIS jointly prepared by NITDA, Ministry of Communications, Innovation and Digital Economy, and the National Centre for AI and Robotics.[31] This strategy outlines plans to harness AI across sectors including education. Similarly, the Nigerian Bar Association (NBA) in September, 2024 issued AI guidelines for legal practitioners, emphasizing responsible, data privacy and transparency when deploying AI in legal services.[32]

Challenges related to technical and contextual factors also affect effective AI usage in Nigerian universities. Infrastructural gaps such as limited access to devices and internet, data-privacy and

[30] Ibid.

[31] Laura Ebrusike and Nonso Anyasi, "The Status of AI Regulation in Nigeria," *Lawyard*, last modified 2024, accessed April 25, 2025, https://www.lawyard.org/news/the-status-of-ai-regulation-in-nigeria-laura-ebrusike-and-nonso-anyasi/#:~:text=In August 2024%2C Nigeria unveiled,inclusivity across different social segments.

[32] Jeffrey Shin and Cameron Lee, "AI Watch: Global Regulatory Tracker - Nigeria," *White & Case*, last modified 2025, accessed April 25, 2025, https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-united-states#article-content.

ethical safeguards are often lacking in the institutions.[33] Lecturers may lack the needed training to spot AI generated work, and also the existing plagiarism detectors are ineffective against sophisticated AI text. Globally, some institutions attempt to bans or imposed strict policies towards its usage.[34] However, Nigerian institutions have no uniform rules resulting to dilemmas of how to balance the learning benefits of rapid drafting and research against risks of cheating and shallow learning.

Similarly, in the legal field a cautionary instance comes from the real case of two US lawyers submitted a legal brief that unknowingly included some fake case citations generated by ChatGPT.[35] This incident highlights that AI can fabricate acceptable sounding but false information, which user may not detect without diligence. This also illustrates the danger of over reliance on AI among law students. The NBA's AI guidelines highlight the duty of care and stressing human oversight and transparency in any AI assisted legal work.[36]

Furthermore, undergraduate students including law students face ethical and practical challenges when using AI tools like ChatGPT. A study of Nigerian university students found that a majority identified AI tools as risks for academic dishonesty, distractions and also appeal of instant AI-generated answers can promote shortcuts rather than deep learning. [37] This rise the concerns about need to regulate AI in classroom. It was noted that ChatGPT can save students time from tedious task of drafting and summarising, allowing them to focus on higher order analysis.[38] However, this could be difficult to achieve without guidance. UNESCO urge integration of AI literacy into

[33] Aniekan Essien et al., "Exploring Socio-Cultural Influences on Generative AI Engagement in Nigerian Higher Education: An Activity Theory Analysis," *Smart Learning Environments* 11, no. 1 (2024), https://doi.org/10.1186/s40561-024-00352-3.

[34] Kathryn Hulick, "How ChatGPT and Similar AI Will Disrupt Education," *Science News*, last modified 2023, accessed April 25, 2025, https://www.sciencenews.org/article/chatgpt-ai-artificial-intelligence-education-cheating-accuracy.

[35] Ellis Di Cataldo, "US Lawyers Fined For Fake Citations Generated By ChatGPT," *Tech.Co*, last modified 2023, accessed April 25, 2025, https://tech.co/news/us-lawyers-fined-fake-chat-gpt#:~:text=,Kevin Castel.

[36] Shin and Lee, "AI Watch: Global Regulatory Tracker - Nigeria."

[37] Edidiong Orok et al., "Pharmacy Students' Perception and Knowledge of Chat-Based Artificial Intelligence Tools at a Nigerian University," *BMC medical education* 24, no. 1 (2024): 1237.

[38] Sadiq Buhari Bello et al., "Perceptions of Ease of Use and Usefulness of Artificial Intelligence ChatGPT among Undergraduate Law Students of Ahmadu Bello University, Zaria," in *Law and Contemporary Societal Issues* (Zaia, 2024), 1–9.

curricula so that students learn to use these tools critically and ethically[39]. Otherwise, there is a risk that creativity, original problem-solving, and deep subject mastery will decline. The consensus in the literature is that balance is essential through cultivating students' human creativity and judgment, while also teaching them to leverage AI responsibly.[40] For future lawyers, this means mastering both the technology and the timeless craft of legal reasoning.

6. CONCLUSION

The findings of this study reveals a high level of awareness of ChatGPT among undergraduate law students of ABU, Zaria. Their perceived usefulness and ease of use of ChatGPT are positively assessed among the students. Despite the varying levels of usage frequency, the results affirm that students recognise the ChatGPT's potential in supporting academic activities, particularly in simplifying access to information, improving productivity, saving time and future utilisation in their Legal career of service. The Technology Acceptance Model (TAM), as applied in this study, confirms that perceived usefulness and ease of use are strong predictors of technology among students in legal education.

However, there is growing need for institutions to actively integrate AI tools like ChatGPT into legal education framework. Academic staff and curriculum developers should consider structured training and sensitization programs to promote responsible usage, enhance students' digital literacy and mitigate risks of misuse or overreliance. Moreover, policymakers and educational stakeholders should establish clear guidelines that balance innovation with ethical standards, ensuring that such technologies complement rather than replace the critical thinking and analytical reasoning essential to legal practice.

7. RECOMMENDATIONS

Based on the findings, this study recommends the following:

1. **Instructional Integration of AI tools:** The institutional administration and faculty should explore possibilities for formally integrating AI-powered tools such as ChatGPT into legal

[39] UNESCO, *Artificial Intelligence in Education: Challenges and Opportunities for Sustainable Development*.
[40] Hulick, "How ChatGPT and Similar AI Will Disrupt Education."

education curriculum. This could include incorporating them into research methodology courses and legal drafting courses to enhance students' access and acquaintance to digital learning support.

2. **Digital Literacy Programs:** workshops and training sessions should be organised by institutions to improve both students' and lecturers' digital skills with a particular focus on the ethical and effective use of generative AI tools. The programs should also aim to build critical digital literacy and promote responsible usage.
3. **Policy Development and Guidelines:** The institutions should develop clear policies that outline acceptable use, limitations and ethical considerations surrounding the use of AI tools in academic work. Such guidelines will help prevent misuse, promote academic integrity and support informed decision making among both students and lecturers.
4. **Further Research:** The study also recommended that further studies be conducted to explore the long-term impact of ChatGPT on students' performance, critical thinking and professional development, particularly in the field of law. Comparative studies across faculties or institutions could also provide broader insights.
5. **Engagement and Awareness:** Lecturers should be encouraged by institution to engage with AI tools themselves to better understand their potentials and limitations. This will enable lecturers to guide students effectively and embed AI awareness within the pedagogical process.

CORRUPTION AS AN IMPEDIMENT TO THE IMPLEMENTATION OF AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT AND AFRICAN TRADE: THE NIGERIAN PARADIGM

Busari Morufu Salawu*

Abstract

This study looks at corruption as an impediment to the implementation of African Continental Free Trade Area (AfCFTA) Agreement and African trade. The paper undertook an overview of the corruption in Nigeria. It also discussed the legal and institutional efforts to tackle the issue of corruption. It also appraised the challenges of corruption on trade in Africa, especially the AfCFTA. A doctrinal research method, relying on primary and secondary sources of data collection was used. The primary source comprised legislations (1999 Constitution of Federal Republic of Nigeria; Economic and Financial Crimes Act, 2004; Independent Corrupt Practices Commission Act 2004; Public Procurement Act, 2004 and a host of other transparency laws) and case law. The secondary source included textbooks, journal articles, newspapers, conference proceedings and the Internet sources. The study revealed that there is official corruption in Nigeria's public life, capable of interfering with national development. It is also found that the challenges of official corruption have a deleterious effect on international trade, especially the trade in Africa. The legal and institutional frameworks in Nigeria are not robust and inadequate to curb official corruption, if weak implementation of the laws is not prevented. The study concluded that corruption is a major impediment to trade in Africa which needs to be curbed through stronger implementation of the domestic laws of the State Parties.

Keywords: African Continental Free Trade Area (AfCFTA) Agreement; Corruption; Financial Transparency; Money Laundering; Public Procurement; Rule of Law

Introduction

Nigeria is the biggest market in Africa with an estimated 229,152,217 million people at 2.39% annual increase.[1]. Its economy is anchored on export goods such as cocoa, butter, ginger, rubber,

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palm kernel oil, cassava, groundnuts, and yam apart from its richness in mineral deposits.[2] It is also a market open to imported commodities from other African states.[3] The AfCFTA Agreement, therefore, promises to increase trade relations between it and other African nations. This has been estimated to run into billions of dollars annually.[4]

The major impediment to the public service administration and trade (internal or international) in Nigeria since independence on 1st October, 1960 is official corruption.[5] Since 1999 when the Fourth Republic democratic leadership came on board, politicians had perfected various acts and devices of misappropriating public funds, embarking on money laundering and interfering with businesses and trades across borders.[6] These practices on the part of the political leaders and businessmen had threatened the Economic Community of West African countries of which Nigeria is a market leader. Nigeria's adoption of the AfCFTA[7] has raised a fresh concern on the impediments which corruption could create for the success of the continental free trade agreement. However, foreign companies have committed serious cases of corruption in developing nations, including Nigeria. For example, the confession of Siemens, a leading global engineering firm, that it had made corrupt payments up to the tune of 10million Euros to Nigerian government officials between 2001 and 2005 to facilitate contract awards.[8]

Another instance of monumental corruption by a foreign company operating in Nigeria involved the TSKJ Consortium which bided to promote services of $12billion liquefied natural gas project that was partly cured by Nigerian government and the Royal Dutch Shell group. When the initial bid was rejected, the TSKJ group enlisted the services of Tristar Investment, a separate company which was scheduled to provide 'consultancy' services to help the company run the contract in the LNG Project. The TSKJ was eventually awarded the project for $2billion for the Nigeria LNG

[1] Macrotrends, 'Nigeria Population 1950-2025 < https://www.macrotrends.net/global-metrics/countries/nga/nigeria/population> accessed 12 April 2025.

[2] Bowa-gate Global, Ultimate List: 20 profitable products to export from Nigeria and make huge profit. <https://bowagateglobal.com> accessed12 June 2024.

[3] Tralac, 'Nigeria: Intra-Africa trade and tariff profile 2020 infographic,' <https.//www.tralac.org> accessed 18 July 2024.

[4] The World Bank, 'The African Continental Free Trade Area,' <https://worldbank.org > accessed 17 July 2024

[5] I.T. Mohammed, Fight against Corruption in Nigeria, Sharia Point of View. In Yusuf O. Ali. *Corruption in Nigeria: Issues, Challenges & Solutions* (Yusuf O. Ali, 2016)134-168.

[6] UNODC, Corruption in Nigeria: Patterns and trends: Second survey in corruption as experienced by the population (Vienna, UNODC, 2019) 41.

[7] This was on 7 July 2019.

[8] Ngozi Okonjo Iweala, *Reforming the Unreformable: Lessons from Nigeria* (MIT Press Books, 2012)86.

Project. It was later revealed that TSKJ group surreptitiously agreed to pay about $180million to various foreign accounts of Nigerian public officers to help secure the profitable contract, "through inflated contracts and undermining of the country's institutions."[9] The two examples reported by the former Finance Minister, and the Director General of World Trade Organisation (WTO) depicted clearly what corruption in trade relations could cost a nation, not to talk of a continental trade organisation, like AfCFTA.

Many studies have focused on the impediment which corruption had created for good governance in Nigeria,[10] but less studies have however been conducted on the challenges corruption could pose to the implementation of AfCFTA and the Africa trade. Researching into this area would bring up some suggestions that could insulate the implementation of the AfCFTA and the Africa trade from corruption and lead to some legal and institutional reforms in that regard.

The paper investigated corruption as an impediment to the implementation of AfCFTA and African Trade. The objectives were to undertake an overview of state of corruption; identify challenges corruption could pose to AfCFTA and appraise the legal and institutional frameworks for tackling corruption in Nigeria and trade in Africa.

The paper relied on primary and secondary sources of information. The primary source included 1999 Constitution of the Federal Republic of Nigeria (CFRN);[11] Economic and Financial Crimes Commission Act,[12] 2004; Advance Fee Fraud and other Related Offences Act;[13] Code of Conduct Act Bureau and Tribunal Act;[14] Corrupt Practices and other Related Offence Act;[15] Public Procurement Act;[16] and sundry transparency laws) and case law. The secondary source included textbooks, journal articles, conference proceedings, newspapers and the Internet.

The paper is structured into five sections. The first section is the introductory part which gives its scope. The second section undertakes an overview of corruption in Nigeria. The third section

[9] Ibid, 86.

[10] Ngozi Okonjo Iweala, *Reforming the Unreformable: Lessons from Nigeria*, (The MIT Press Cambridge, Massachusetts,2012); Opeyemi A. Oladimeji, *Moral Decadence among Nigerian Youths: A Menace to National Development* (Wonderful Family Publishers,2018); Farida Mzamber Waziri, *Advance Fee Fraud, National Security & the Law* (Bookbuildrs,2005) etc.

[11] Cap C23, Law of the Federation of Nigeria (LFN) 2004.

[12] Cap E1, LFN 2004.

[13] Cap A6, LFN 2004.

[14] Cap C15 LFN 2004.

[15] Cap C31, LFN 2004.

[16] 2007 Act No 14.

examines the AfCFTA in African trade in Africa, while section four appraises the challenges corruption could pose to its implementation among the State Parties, especially Nigeria. Section five is the conclusion.

2.0 OVERVIEW OF SECTOR CORRUPTION IN NIGERIA

2.1 NATURE OF CORRUPTION IN NIGERIA

Definitions of corruption have been attempted by many scholars, but the most accessible definition is to view it as "the misapplication of public resources to private ends."[17] It may also be viewed as "an arrangement that involves exchange between two parties (the demander and the supplier) which (i) has an influence on the allocation of resources either immediately or in the future, and (ii) involves the use or the abuse of public or collective responsibility for private ends"[18]

Causes of corruption have been identified to include policy induced sources such as trade restrictions, government subsidies and multiple exchange rate practices and foreign exchange allocation and low wages for the public and private sector workers.[19] Others are cultural and or political sources, poverty, political instability and other societal forces such as pressures from families, colleagues and political associates), poor wage considerations (inadequate pay, fringe benefits and other financial incentives), inefficient internal control (inadequate supervision and control systems, lack of explicit standards for employees and organisations, poor recruitment and selection procedures, too few or too many (non-transparent) rules and procedures (red tape).[20]

Corruption in Nigeria, as in the global community, operates in varying forms. In Nigeria's public sector, it has been identified to include "bribery, extortion, cronyism, nepotism, patronage, influence peddling, graft and embezzlement, money laundering etc." [21] It also includes misuse of government power for other purposes not intended, such as to repress political opponent or to

[17] Emmanuela Ceva and Maria Paola Ferreti, 'Political Corruption,' 2017 (12)12 *Philosophy Compass,* 1-10 , <https://doi.org/10.1111/ph3.12461> accessed 13 June 2024,

[18] J. Macrae, 'Underdevelopment and the economics of corruption', A game theory; 1982 (10)8, *World Development,* 677-687.

[19] Yusuf O. Ali, 'The Fight against Corruption in Nigeria' in Yusuf O. Ali (ed.) *Anatomy of Corruption in Nigeria: Issues, Challenges & Solutions* (Yusuf O. Ali,2016)1-31.

[20] Van Rijckejem and B. Weder (1997) 'Corruption and the rate of temptation: Do low wages in Public Civil Service Cause Corruptions?' Working Paper 97/73 (Washington).

[21] Oladapo A. Afolabi, 'Eradicating Corruption in the Civil Service'. In E.M. Essien and G.B. Ayoola, *Corruption Eradication and the Nigerian Ethical Revolution,* Proceedings of the 8th Forum of Laureates of the Nigerian National Order of Merit (1st-2nd December 2015)13-35.

embark on police brutality.[22] All these forms exist in Nigeria and it has got to a stage that a former President, Muhammadu Buhari, has to declare that "if we (Nigerian) do not kill corruption, corruption will kill Nigeria"[23]

Price Water House[24] reviewed 32 studies on the menace of corruption in Nigeria; 20% was sponsored by international organisations; 22% published by Nigerian scholars affiliated with Nigerian universities; 16% was published by other academics as well as3% in-house studies. It was revealed that seventy percent (70%) of the 32 studies conducted quantitative studies on the Nigerian economy, while also examining qualitative relationships between corruption and economic outcomes. After an extensive review, Price Water House further analysed the effect of corruption on economic growth.[25] The study indicated that corruption impacted negatively on income into the economy, natural resources, level of trade openness over the period and change in terms of trade over the period and investment ratio to GDP average over the period.

UNODC[26] also conducted a survey of 33,000 households across the 36 States and federal capital territory in Nigeria to gather data on corruption. It was designed to analyse the actual experiences of Nigerians when they encountered 20 types of public officials. It evaluated the probability of citizens being called upon to pay bribes, as well as the recurrence of the requests and payments. It also sought to gather citizens' attitudes towards corruption, their readiness to refuse to give bribes and report erring officials to the authorities. Results indicated that bribery was less prevalent than three years earlier (2016) when the first survey was conducted. Although few Nigerians had contact with public officials paid bribes, or were asked to pay bribes, those who paid continued to do so quite frequently, as each of them reported that they paid an average of six bribes less ½ months prior to the survey. In all, with at least one public official, 30% of them paid at least one bribe.

Iweala,[27] an experienced technocrat and the Director General of World Trade Organisation (WTO) relived her encounter with the war against corruption in Nigeria. She commented:

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[22] Ibid

[23] Jimitot Omoyume, "If we don't kill corruption, it will kill us' says Buhari." *Vanguard* (March 12, 2015). <https: www.vanguardngr.com> accessed 30 April 2024.

[24] 'Impact of Corruption on Nigeria's Economy' PW (2016).< https://wwwpwc.com> accessed 30 April 2024.

[25] Ibid.

[26] 'Corruption in Nigeria: Second Survey on Corruption as Experienced by Population' (December 2019). <https://www.unodc.org> 10 May 2024.

[27] Ngozi Okonjo-Iweala, *Fighting Corruption is Dangerous: The Story behind the Headlines* (The MIT Press, 2018)

> So telling my story is risky. But not telling it is also dangerous. Silence would allow these same vested interests in my country, the same corrupt people, to distort events, twist factual accounts, and hide behind lies, half-truths, and obfuscations to protect themselves and harm others. With the co-operation of unscrupulous media, they turn truth to lies and promote lies as truth.[28]

The above experiences, which led to the kidnapping of her mother, and serious threat to her life and that of her loved ones, show how dangerous it is to fight institutional corruption which has eaten deep to the fabrics of the Nigerian nation.

Corruption is endemic in Nigeria's national life, and it has become the cankerworm threating its corporate existence. Since 1999 when the Third Republic came on board, corruption has been institutionalised, considering various cases of financial corruption being perpetrated by public officials. Reports of the request by the legislature for bribes from public officials to pass the budgets of their Ministries, Departments and Agencies (MDAs), budget padding, compromise of oversight functions of the legislatures, contract splitting and so on are published in the media.[29] Corruption in Nigeria's oil sector has cost a huge some of financial resources. The dimension of fuel subsidy manipulation, crude oil theft by public officials, is humongous.[30] This cut across the legislative, the executive and the judicial arms of government.

Corruption has been with Nigeria since Independence in 1960. The fall of the First and Second Republics (1 October 1960 to 15 January 1966 and 1 October 1979 and 31 December, 1983 respectively) was attributable to corruption. In the first Republic, Government's ministries, departments, and agencies stole public funds and there was no policy direction to stamp out corruption, election rigging, nepotism and prebendalism of the day.[31] All these formed the bases for the military coup and the counter coup in 1966 and 1967.

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[28] Ibid, 121.

[29] Anthony Standon, 'Parliamentary oversight and corruption in Nigeria'. A Report Funded by British Academic and Department of International Development (DFD), as part of its Anti-Corruption Evidence (ACE) Partnership (2017). <https://www.ace.globalintegrity:org> accessed 30 April 2024.

[30] Kennedy Mbele,' Oil Gas Sector the most corrupt in Nigeria.' *Vanguard* (July 2, 2023). < https://www.com> accessed 10 May 2024.

[31] U.E. Uwak and Anietti Nseowo Udofia. 'Corruption in Nigeria's Public Sector Organisation and Its Implications for National Development.' (2016) 7(3). *Mediterranean Journal of Social Sciences,* 27 - 35

In General Yakubu Gowon's administration, corruption was deeply entrenched in the fabrics of Nigeria while the oil boom led to the pursuit of white elephant projects which created opportunities for the public officials to steal national funds.[32] The Murtala administration which overthrew the Gowon 9-year rule had to embark on mass sack of public officials who had been accused of corruption.[33] Successive military and civilian governments institutionalised corruption. The administration of General Sani Abacha would go down in the history of Nigeria as an era when mass looting of national resources literally became a public policy.[34] This trend was inherited by the Third Republic leadership.

2.2 Corruption and International Trade: Challenges for AfCFTA and African Trade

Studies have revealed that corruption in trade practices is not limited to any region as it occurs in any situation where a party seeks an improper business advantage. A study compared measures of trade-related corruption in international trade with corruption in general.[35] It was found that corruption in the exporting economy was different from that of the importing economy, with the more robust effect in importing countries with inefficient customs which increased delays at the border and largely reduced trade. Although the focus of the study is on global trade, its findings relate to African countries which are also members of the global village.

Another study on regional integration in Africa and their effects on AfCFTA revealed that language barriers, multiple currencies, porosity of borders, foreign interference, political stability and insecurity, poor human development overlapping membership of regional bodies are key challenges that must be overcome for the achievement of its objectives.[36]The overall effect of these constraints could lead to, and promote, corruption as the factors identified inhibit trade facilitation.

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[32] Joshua O. Nweke. 'Bureaucratic corruption in the administration of military pension in Nigeria' (2010) 5(1) *International Journal of Development and Management Review* 50 - 60.

[33] Aisha Muhammed Oyebode, 'Muritala Muhammed: 42 Years Later and a Call for National Rebirth' *KIR* (February 13, 2018). <https://www.newnigeria.org> accessed 10 May 2024.

[34] BBC, Sani Abacha, The Hunt for the Billion Stolen by Nigeria's Ex-leader' (January 28, 2021). <www.bbc.com> accessed 10 May 2024.

[35] Eelke de Jong & Christian Bogmans,'Does Corruption Discourage International Trade?' (2011) (27) (2) *European Journal of International Trade*, 385-398 < https://doi.org/10.1016/j.ejpoleco.2010.11.005 > accessed 12 November 2024.

[36] Dimas Garba & Wancelous Avong Alexander, 'The Challenges of Regional Integration and Effective Implementation of African Continental Free Trade Area (AfCFTA)Policy in Africa,' (2021) (16)(2) AJPAS < https://www.ajpasebsu.org.ng > accessed 9 November 2024.

Participants in continental trade could find ways to surmount these challenges through bribery and unethical trade practices which could undermine the implementation of the AfCFTA.

It has been contended that the objectives of the AfCFTA may not be realised if Africa refuses to combat corruption within the continent and member nations.[37] Provisions of the AU Convention on Prevention and Combatting Corruption (AUCPCC) were recommended for incorporation into the AfCFTA to reflect the continent's readiness to combat corruption. Furthermore, Nigeria is a signatory to major international and regional instruments such as the United Nations Convention against corruption (UNCAC), the UACPCC, the ECOWAS Protocol on the Fight against Corruption, among others. These instruments recommend that the State Parties may adopt prevention, criminalisation, asset recovery, international cooperation and public awareness .to fight corruption[38] A diligent implementation of these instruments among state parties could reduce corruption substantially. However, the report of a Nigerian study on this appears conflicting. [39] It finds that investigating and prosecuting corruption was not effective in Nigeria due to delays which had been attributed to the absence of political will on the part of the political leadership and the nonchalant attitude of the citizens. This unique finding in Nigeria needs to be taken seriously for seamless implementation AfCFTA as Nigeria is a major player.

A study on corruption and trade facilitation costs in a Chinese company made use of the systematic variations in entertainment and travel costs (ETCs), across various markets and trading partners. [40] The results indicated a significant increase in ETCs was recorded when the sales were to domestic markets which dropped when firms exported to international markets.[41] Also, when firms sold to government-run and state-owned companies rather than other trade partners companies, the ETCs were significantly higher.[42] The conclusion of the authors was that the differentials were because of regional trade segmentation and local protection in China, since ETCs contained

[37] Gbemi Odusote & Yakusak Aduak, 'Implementing the African ContinentalFree Trade Area (AfCFTA) Agreement and the Challenges of Corruption in Africa,' (2022) (12) Open Journal of Political Science 321.
[38] UNCAL, Art. 2(2); African Union, Art.4 & 5.
[39] Gbemi Odusote & Yakusak Aduak, 'Implementing the African ContinentalFree Trade Area (AfCFTA) Agreement and the Challenges of Corruption in Africa, 321.
[40] Douglas Cumming and Ying Ge, 'Trade Facilitation Costs and Corruption: Evidence from China.' (2022) (78) Journal of International Financial Markets. Institutions and Money <https://doi.org/10.1016/j.intfin.2022.101564 > accessed 19 November 2024'
[41] Ibid.
[42] Ibid.

significant "grease money" to prevent the operation of domestic trade barriers.[43] This study exposes corrupt behaviours in trade facilitation costs in China, with wide implications for African trade with China, and among the State Parties under AfCFTA.

On the impact of corruption in international trade, a negative influence of corruption was reported when a study concluded that corruption might be a barrier to international trade by increasing its costs when corrupt state agents break the rules.[44] This result indicates that corruption could inhibit international trade when corrupt public officials break regulations easily in line with "grease the wheels" hypothesis.[45]

Considering corruption and ease of doing business in ECOWAS countries, Nager and Gunu conducted an empirical study on the effect of corruption on the ease of doing business.[46] Results indicated that corruption rank, inflation and import have negative and significant effect on ease of doing business, while corruption score, control of corruption, lending rate spread, and education (skill level) have positive and significant effect on the ease of doing business. Export and gross domestic products have an insignificant positive effect on ease of doing business. The study recommended that countries should improve on their corruption scores, control of corruption and ranks to promote ease of doing business through monetary and infrastructural facilities. This is instructive for the successful implementation of AfCFTA.

3.0 OVERVIEW OF AfCFTA

3.1 BRIEF HISTORY

The AfCFTA was signed on 21 March, 2018[47] by the continental body to improve African trade. The central aim of the trade agreement was the acceleration of economic developments in Africa. The AfCFTA entered into force on 30th May 2019 as part of the agenda 2063 of the AU for a single

[43] Ibid.

[44] Salvador Gil -Pareja, Rafael Llorca Viveroy and Jose Antonio Martinez- Serrano, 'Corruption and International Trade :a Comprehensive Analysis with Gravity,' (2019)(27)(2) Applied Economic Analysis, < https://wwww.emeraldinsight.com/2632-7627.htm> accessed 19 November, 2024.

[45] Ibid.

[46] KI Nageri and U Gunu, 'Corruption and Ease of Doing Business: Evidence from ECOWAS.' (2020) (8) Acta Uni Sarpentiae, Economics and Business, 19.

[47] African Union; The African Continental Free Trade Area. Retrieved from <https://www.au.int/en/african-continental-free-trade-area on 25 January 2024.

Custom Union and a single common market,[48]while the official trading commenced on 1 January 2021.

This Agreement has eight important protocols which it intends to achieve in objectives. These are: trade in goods; trade in services; digital trade; rules and procedure on the settlement of disputes; investment; intellectual property rights and competition policy[49] and women and youth in trade.[50] These protocols are sub-agreements which guide the implementation of the Agreement. The Protocols are detailed and comprehensive. They highlight the procedures through which the objectives would be achieved.

3.2 OBJECTIVES OF AfCFTA

The aim and the expansive objectives of the Agreement (both general and specific) point to the African Union's desire to establish an integrated continent, with political and socio-economic affiliation to achieve its potential as a continent most blessed with natural resources.[51] The AU Agenda 2063 appears to be a strategy for achieving a unified custom union, a political and socio-economic union and an Africa full of opportunities and economic boom.[52]

Objectives of the agreement adopted at the session includes: the creation of single market for goods and services; free market for good and service; preparing ground for African Customs Union, promotion and attainment of inclusive socio-economic development, gender equality and structural transformation as stipulated in Agenda 2063.[53] It also plans to enhance competitive economies of the state parties; promote industrial development through diversification of the supply chain and resolve the challenges of multiple and overlapping membership and fast track regional and continental integration processes.[54]It is also saddled with the creation of single and

[48] Richard Frimpong Oppong, 'Private International Law and the African Economic Community: A Plea for corrector Attention' The International Comparative Law Quarterly, 2006(55)4, 911-928.
[49] Ibid, Article 3.
[50] John Stuart. 'The AfCFTA Protocol on Women and Youth in Trade and Trade-Drivrn Development in Africa,'Tralac (24February,2024) < https://www.tralac.org/blog/article/16234-the-afcfta-protocol-on-women--and-youth-in -trade-and-trade-drivendevelopment-in-Africa.html/> accessed 9 November,2024.
[51] Nigerian Economic Summit Group (NESG), Economic Implications of the African Continental Free Trade (AfCFTA) on the Nigerian Industrial Sectors'. Accessed from <https: www.nesgroup.org> on 15 March 2024
[52] Richard Frimpong Oppong, 'Private International Law and the African Economic Community: A Plea for corrector Attention;' Orji Uka 'Cross Border Dispute Resolution under AfCFTA: A Call for the Establishment of a Pan-African Harmonised Private Internal and Legal Regime to Actualised Agenda 2063,' Law Digest Journal Spring 2020, Retrieved from <https: www.au.company> on 25 January 2021.
[53] Agreement Establishing the African Continental Free Trade Area.
[54]Ibid.

free market for goods and services and the preparation for the takeoff of African Customs Union and promotion as stipulated in Agenda 2063.[55]

Apart from its general objectives, additional seven specific objectives include the phased elimination of trade barriers in goods, free trade in services, investment cooperation, intellectual property rights, competition policy and trade liberalisation and facilitation among state parties.[56] Others are co-operation on customs matters and the implementation of trade facilitation measures, establishment of mechanism for dispute resolution concerning parties' rights and obligations and establishment and maintenance of an institutional framework for the AfCFTA's implementation and administration.[57]

The aim and expansive objectives of the Agreement (both general and specific) point to the African Union's desire to establish a continent where state parties will trade with one another with ease and political and socio-economic affiliations will thrive for development.[58] The AU Agenda 2063 upon which the Agreement rests, is a strategy for achieving a unified custom union, a political and socio-economic union and an Africa full of opportunities and economic boom.[59] Based on these objectives, Africa stands to gain a lot from an effective implementation of the Agreement for a sustainable growth in African trade.[60]

3.3 ORGANS OF AfCFTA

These are the Assembly, the Council of Ministers, the Committee of Senior Trade Officials and the Secretariat.[61] The Assembly of the Heads of States is the highest decision-making organ of the AU. It has an oversight function and strategic guidance on the AfCFTA which includes boosting the

[55] Agreement Establishing the African Continental Free Trade Area.
[56] Ibid, Article 4.
[57] Ibid, Article 4.
[58] Nigerian Economic Summit Group (NESG), Economic Implications of the African Continental Free Trade (AfCFTA) on the Nigerian Industrial Sectors.' <https://www.nesgroup.org/download_resource?AFCFTA%20on%20Industrial%20Sector_1576844589.pdf> accessed 15 March 2024.
[59] Richard Frimpong Oppong, 'Private International Law and the African Economic Community: A Plea for corrector Attention;' Orji Uka; Cross Border Dispute Resolution under AfCFTA: A Call for the Establishment of a Pan-African Harmonised Private Internal and Legal Regime to Actualised Agenda 2063'.
[60] NESG, Economic Implications of the African Continental Free Trade (AfCFTA) on the Nigerian Industrial Sectors.'
[61] AfCFTA, Article 9.

Action Plan for Intra-African Trade (BIAT) and exercising sole authority for interpreting AfCFTA upon the advice of the Council of Ministers. The Assembly must take the decision by consensus.[62] The second institution is the Council of Ministers comprising of Ministers of Trades, or any other Ministers, authorities, or officials which State Parties designate.[63] Its functions are as contained in Article 11(3)(a) – (p). The Council reports to the Assembly through the Executive Council.[64] Its terms of reference include: taking decisions in line with the Agreement and ensuring it is implemented and enforced effectively, promoting the objectives of the Agreement and other AfCFTA instruments and collaborating with the appropriate organs and institutions of the AU.[65] It also harmonises policies, strategies and measures for implementation; delegates tasks to committees; prepares its decisions and those of other bodies of the AfCFTA and supervises works with groups and experts.[66] It issues rules and regulations, directives and proposes recommendations for the implementation of the Agreement.[67] Decisions of the Council are binding on State Parties, upon their adoption by the Assembly.[68]

Article 12 presents the functions of Senior Trade Officials which consist of the Permanent or Principal Secretaries or other officials of the State Parties[69] to include the implementation of the Council of Ministers' decisions, development of programmes and action plans for AfCTA's implementation, monitoring and keeping the Agreement under constant and proper review as stipulated.[70] Others are the establishment of committees and working groups, overseeing the implementation of the provisions of the Agreement, directing the Secretariat to undertake specific assignments and perform any other function the Council of Ministers.[71] The Committee reports to the Council of Ministers upon whose directive, it meets twice in a year.[72]

The last institution of the AfCFTA is the Secretariat. It is established by the Assembly which decides its location and approves its structure and budget. It is established as an autonomous body

[62] Ibid.
[63] Ibid Article 11(1).
[64] This is the Executive Council of the General Assembly.
[65] Ibid, Art 11(3)(a)-(c).
[66] Ibid, Art 11(3)(d)-(h).
[67] Ibid, Art 11(3)(i)-(j).
[68] Ibid, Art 11(5).
[69] Ibid, Article 12(1).
[70] Ibid, Article 12 (2)(a) – (c).
[71] Ibid, Article 12(2)(c)-(g).
[72] Ibid, Article 12(3).

of AU with a legal personality.[73] The implication of this is that the Secretariat is to be independent of the AU Commission while its funds is derivable from its overall budget.[74] However, the determination of the roles and responsibilities of the Secretariat shall be done by the Council of Ministers of Trade.[75]

The structure of the AfCFTA is like the World Trade Organisation which is headed by the Ministerial Trade Conference. Other organs of the WTO are the General Council, the Dispute Settlement Body and the Trade Policy Review Body.[76] Its highest decision-making body is the Assembly, while the Council of Ministers, the Committee of Senior Trade Officials and the Secretariat provide the structure for its implementation.

The solid institutional framework and effective decision-making process which are patterned after WTO are the pillars on which the success of the AfCFTA could rest to reduce the incidents of corruption among state parties.

AfCFTA has 12 principles, some of which are set to aid transparency and trade facilitation among State Parties. These are "…(d)flexibility and special differential treatment; (e)transparency and disclosure of information; (f) preservation of the acquis; (g)

Most-Favoured-Nation (MFN) Treatment; (h) National Treatment; (i) reciprocity; (j) substantial liberalisation; (k) consensus in decision-making; and (l) best practices in the RECs,[77] in the State Parties and International Conventions binding the African Union".[78] These principles are formulated to deal with emerging issues in African trade, including corruption.

With the pervasiveness of corruption in Sub Saharan Africa, it is hoped that the structure will be able to withstand its threats.

3.4 LESSONS FROM OTHER WTO AND OTHER REGIONAL TRADE BODIES

Regional economic and political integration bodies pre-existed AfCFTA in Africa. Thes include Economic Community of West African States (ECOWAS), Common market for Eastern and Southern Africa (COMESA), Arab Maghreb Union (AMU) International Authority for

[73] Ibid, Article 13(3).
[74] Ibid, Article 13(4) & (5).
[75] Ibid, Article 13(6).
[76] WTO, 'WTO Organization Chart,' < https://www.wto.org/english/thewto_e/whatia_e/tif_e/org2_e.htm > accessed 20 November 2024.
[77] Regional Economic Communities.
[78] AfCFTA, Art 5.

Development (IGAD), Economic Community of Central African States (ECCAS) and a host of others, in various parts of Africa, such as the ECOWAS, Trade Policy. [79] AfCFTA, however, is the first AU's trade agreement which covers the whole of the continent.

ECOWAS Treaty provides for trade liberalisation, labour mobility and free trade in services, in addition to its political mandate. Its performance as a regional trade regulator had suffered some setbacks because of regional insecurity, corruption and fear of political and economic domination from members that believe that Nigeria has a lot to gain from the achievement of ECOWAS objectives.[80]

Furthermore, ECOWAS appears to be more than a regional trade regulator, as it has, on many occasions, regulated political affairs of member States.[81] Its aims depict that:

> … the community are to promote cooperation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, to maintain and enhance economic stability, foster realities among members and contribute to the progress of the African Continent.[82]

The full dedication of the AfCFTA to trade regulation among the State Parties mark it out as a body whose sole objective is the promotion of intra-African trade in goods and services,[83] as the WTO is to the whole world.

Although a lot needs to be learnt from the challenges of other regional trade bodies if the new initiative would succeed and its implementation would move intra-African trade from $50billion in 2024 to $570 billion in 2040 as projected.[84]

3.5 TRADE FACILITATION AND CORRUPTION IN TRADE

Trade facilitation simplifies, modernises and harmonises trade export and import process and make it seamless is absent in an environment of corruption. Although trade facilitation initiatives have

[79] ECOWASS Trade Information System, 'Trade Policy' < https://ecotis.ecowas.int/?page_id=21948 > accessed 12 April 2025.
[80]Chieke Ihejinka, ECOWAS: The Dilema of Integration in a Fragmented Sub-Region. Accessed from <https://www.kckccc.edu> accessed 15 March 2024.
[81]Aljazeera, ECOWAS holdsemergency session over Senegal Crisis and member exits. Aljazeera, Feb 24, 2024. Accessed from https://www.aljazeera.com/new/2024> accessed 16 March 2024.
[82] ECOWAS Treaty (Revised), 1993, Art. 3(1).
[83] AfCFTA Treaty, Art. 3.
[84] Ibid.

been adopted in Africa, many of them have failed due to inefficiencies, corruption and bureaucratic delays.[85]Annex 3 of the Protocol on Trade in Goods of the AfCFTA Agreement contains two annexes dedicated to Customs, Cooperation and Mutual Administrative Assistance, while Annex 4 deals with Trade Facilitation. Both Annexes 3 and 4 set up a Sub – Committee on the Trade Facilitation, Customs Cooperation and Transit, and provides that State Parties should establish National Facilitation Committees to ensure the coordination and implementation of the provisions of the Annex.[86]

To realise the benefits of trade facilitation, State Parties should implement trade facilitation awareness strategies for the private sector and customs authorities to coordinate their functions and abide by principles set up for the AfCFTA.

4.0 CHALLENGES CORRUPTION COULD POSE TO AFCFTA

4.1 PROTECTION OF PUBLIC SECTOR OFFICERS

Although there are many transparency statutes in Nigeria, their implementations are marred by weak enforcement, and the hostile environment to the achievement of their objectives.[87] The special protection granted high-level public sector workers in Nigeria is a threat to AfCFTA. In the executive arm of government, the President, Vice President, Governors, and Deputy Governors have immunity from any form of litigations arising from their actions when they are in power.[88] Judicial attitude to the interpretation of the immunity clause has been strict. In ***Tinubu v IMB Securities,***[89] the Supreme Court held that once a party to a case, either at trial or appeal stage, is one of those mentioned in Section 308 (3) of the CFRN 1999, the court is deprived of jurisdiction. In that case, the appellant was elected and sworn in as a Lagos State Governor when the matter was still in court.[90] It was the decision of the court that the office holder covered by the section could not be sued and that any pending litigation against him as at the time he was sworn in as a beneficiary of section 308(3) must cease.

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[85] WTO, Agreement on Facilitation Ministerial Decision, 7 December 2013.

[86] Talkmore Chidede, Trade Facilitation and the African Continental Free Trade Area,' (Tralac Annual Conference, 2019) <https://www.tralac.org/documents/events/tralac/2740-tralac-brief-trade-facilitation-and-the-african-continental-free-trade-area-march-2019/file.html? > accessed 17 November 2024.

[87] AfCFTA, Art. 14(5).

[88] CFRN 1999, Section 308.

[89] (2001) 16 NWLR (Pt. 740).

[90] Ifediora v Ume (1988), 2 NWLR (Pt. 74); Media Techniques (Nig) Ltd v Adesina (2005) 1 NWLR (Pt. 908).

Executive immunity from civil or criminal litigations, while it shields the office holders from frivolous litigations that could hinder the performance of their duties.[91] It has, however, provided cover for some of them to loot public treasury with impunity.[92] Some of the officers protected would later evade arrest for their actions upon the completion of their tenure. An example is Mr. Yahaya Bello, the former Governor of Kogi State who had evaded arrest by EFFCC through various subterfuges, including the use of the motion ex parte.[93] Yahaya Bello was alleged to have corruptly enriched himself to the tune of 80billion naira. [94] He was later arrested and arraigned before the court. the court.[95]

Apart from those protected by the executive immunity, other public officers have been involved in corruption allegations. In ***AbdulRasheed Maina v EFCC & Ors,***[96] the appellant who was the Chairman of Pension Reform Task Force was found guilty of corruptly enriching himself to the sum of #2 billion pension funds. In recent times, the Minister and her entire Management Team in the Ministry of Humanitarian Affairs who were undergoing investigation at EFCC had been alleged of misappropriating a sum of 32.7 billion naira and $445,000.[97]

Cases of massive public sector corruption involving political class, top level politicians and other public officers have dire implications for AfCFTA whose representatives from Nigeria as a State party are public officers. Although EFCC, ICPC, Code of Conduct Bureau and other institutions set up to combat corruption are working round the clock, the battle rages on.

4.2 WEAK IMPLEMENTATION OF TRANSPARENCY STATUTES

Since the commencement of the civilian regime in 1999, many anti-corruption laws have been passed to fight corruption in Nigeria. These include Corrupt Practices and other Related Offences

[91] Constitution of Federal Republic of Nigeria 1999(as Amended), Cap C23 Law of the Federation of Nigeria, S. 308.
[92] M. Mowoe, Constitutional Law in Nigeria (Malthouse Press Limited, 2008) 169.
[93] Deborah Musa. Appeal Court Stops Yahaya Bello's Contempt Proceeding, against EFCC. The Punch (3 May 2024). Accessed from https://www.punchng.com> accessed 6 May 2024.
[94] Ibid.
[95] EFCC, 'EFCC Arraigns Yahaya Bello for Alleged N110.4 billion' (27 November 2024)< https://www.efcc.gov.ng/efcc/news-and-information/news-release/10552-efcc-arraigns-yahaya-bello-for-alleged-n110-4billion-fraud> accessed 12 April 2025.
[96] CA/k/628K/2018.
[97] EFCC, 'Setting the Records Straight in Investigating of Humanitarian Ministry' Media & Publicity (18 April 2024) https://www.efcc.gov.ng accessed 6 May 2024.

Act 2000,[98] Economic and Financial Crime Commission (Establishment, etc) Act 2004,[99] Advance Fee Fraud and Other Fraud Related Offences Act (1995, No. 13, 2005 No. 26),[100] Money Laundering Act 2003,[101] Dishonoured Cheques (Offences) Act,[102] Recovery of Public Property (Special Provisions) Act, 1984,[103] Public Procurement Act,[104] Fiscal Responsibility Act,[105] Allocation of Revenue (Federation Account, etc) Act.[106] Nigerian Extractive Industries Transparency Initiative (NEITI) Act 2007.

The Code of Conduct Bureau was the first anti-corruption agency dedicated to the prevention, investigation, and prosecution of public officers in Nigeria. The Fifth Schedule of the 1979 Constitution provided a list of codes of conduct for public officers. The weak implementation of the constitutional provisions has militated the performance of the CCB and CCT. CCB charged 889 people at CCT but secured conviction of 45 in 10 years.[107] The rate of conviction is low.

Other transparency laws such as EFCC Act and ICPC Act could not be implemented fully because they operate as organs of the government when most of the infractions of the laws are also from the public sector. Out of the 22 members of the EFCC, only four are not public officers.[108] Item 2(1)(0) states that "four eminent Nigerians with cognate experience in any of the following, that is, finance, bank law or accounting" should be members. In the same vein, the Corrupt Practices and Other Related Offences Act does not state the manner the full membership of the Commission is to be constituted.[109] It merely states the criteria for being members of the Commission which include "persons of proven integrity"[110] and the categories of representation to include agents of the executive arm.[111]

All these gaps in the laws combine to nurture public sector corruption in Nigeria, and if

[98] Cap C31, LFN 2004.
[99] Cap E1, LFN 2004.
[100] Cap A6, LFN 2004.
[101] Cap M18, LFN 2004.
[102] Cap D11, LFN 2004.
[103] Cap R4, LFN 2004.
[104] 2007 Act No 14.
[105] 2007 Act No 31.
[106] Cap A15, LFN 2004.
[107] Ade Adesomoju, 'CCB Charged 889 Persons at CCT, Secured Convictions of 45 in 10 years.'
[108] EFCC Act, section 2(1).
[109] CPC Act, Section 3(3)(4)(6)(7).
[110] Ibid.
[111] Section 1(2)(a)-(a).

they thrive unhindered, they will hinder the successful implementation of AfCFTA in Nigeria.

4.3 PROCUREMENT FRAUD

Section 1 of the Public Procurement Act establishes the National Council on Public Procurements with all full-time members being the nominees of the executive arm and are appointed by the President while the part-time members are to represent the interest of the professional bodies, and society and the media.[112] Despite the fact that this Council is to "consider and approve policies on public procurement in Nigeria,[113] it has never been put in place since the Act's commencement in 2007.

However, since the commencement of the Act in 2007, Nigerian Government has not been able to put in place the National Council of Public Procurement (NCPP) which is supposed to oversee the functions of the BPP, established under section 4. A cardinal function of the NCPP is to "(d) receive and consider, for approval, the audited reports of the Bureau of Public Bureau and (e) approve changes in the procurement process to adapt to improvements in modern technology."[114]

Given the important functions of the NCPP, one wonders how the legal vacuum has not been filled over the years. Commentators have argued that the failure to activate this important organ of NCPP breeds corruption, lack of transparency and probity.[115]

It has been observed that due to part implementation of the PPA, fraudulent activities continue in Nigeria's procurement process, especially with the regime of no objection clause and the attitude of implementers of the BPP.[116] Section 39 PPA provides that "Certificate of No Objection" should be issued on the conditions that "it is not feasible for the procurement entity to formulate detailed specifications for the goods or work or, in the case of services, to identify their characteristics---" and 'where the goods and services are subject to rapid technological advance" and finally, "where the tender proceedings have been utilized but were not successful or the tenders were rejected by

[112] Section 1(2)(a)-(g).
[113] Ibid.
[114] Ibid, S. 4 (d) & (e).
[115] Anthony Ailemen, 'Why FG, should activate National Council on Procurement BusinessDay (October 23, 2023). Accessed from https://www.businessday.ng accessed 5 May 2024: Abdullahi Nafiu Zadawa and Abul Aziz Hussin, 'A Review of the Challenges of Public Procurement Reforms Initiatives in Nigeria'. Social Sciences Postgraduate Seminar (2015) <https://.core.ac.wc> accessed 5 May 2024.
[116] Afonne Emmanuel, 'NGO prays court to nullify BPP'S Certificates of no objection issued since 2007' News Agency of Nigeria (August 4, 2023). Accessed from <https://www.nannews.ng> accessed 5 May 2024.

the procuring entity under an open competitive bid procedure." It has been stated that procurement fraud alone costs Nigeria over #300billion yearly.[117]

Based on the above and to facilitate corruption-free procurement in the public sector, the PPA requires full and transparent implementation which requires immediate setting up of NCPP to oversee the activities of BPP.

4.4 INDEPENDENCE OF THE JUDICIARY

Independence of the Judiciary

To be an impartial arbiter in the fight against corruption, the judiciary must be an impartial and independent arm of the Government. Judicial independence has been construed as" "the insulation of the administration of the judiciary and the decision-making process of the judges, their appointments, promotions, and removal from the external control by governmental and non-governmental bodies or individuals."[118] This definition from an eminent jurist, Kawu CJ, captures the whole essence of the independence of judiciary as conceived by the CFRN 1999. The constitution provides for the appointment, discipline and removal of judges of superior courts of records.[119]

The issue that readily comes up is whether these provisions which saddle the executive arm (the President and the Governors) the responsibility of appointing judges upon the recommendation of the National Judicial Commission (NJC), and in the case of Heads of the Courts, subject to the approval of the legislature guarantee judicial independence? The NJC's only role is the recommendation of appointment or the removal of a judge to the President or the Governor, which he is not bound to accept. This constitutional arrangement may likely hinder the independence of the judiciary in the exercise of its role in the fight against corruption, especially in cases involving members of the executive and the legislative and their cronies.[120]

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[117] Mathias Okwe, 'Procurement fraud costs Nigeria over #300billion yearly – Forensic Institute. 'The Guardian (May 4, 2021). < https://www.guardian.ng> accessed 5 May 2024.

[118] S.D. Kawu. 'Extermination of Corruption: The Role of the Judiciary'. In Yusuf O. Ali (ed.) *Anatomy of Corruption in Nigeria: Issues, Challenges & Solutions* (Yusuf O. Ali,2016), 415-448.

[119] See CFRN 1999 (as amended) Sections 231; 238; 254B; 256; 261; 266; 271; 276 and 281 and Part I, Para 1, Third Schedule of the constitution.

[120] S.D. kawu , 432.

In embarking on a sustainable battle against corruption, it is suggested that any constitutional provision which saddles the executive and the legislative arms of government with the appointment or promotion of judge should be amended. Borrowing from the recommendation of Kawu CJ,[121]

> --- I suggest that the roles of the NJS and the Executive/Legislative be reversed so that recommendation for appointment or removal of a judge from office is made by the President or Governor through the respective Judicial Service Commissions with inputs from NBA, while the appointment or removal is done finally by the NJC subject to no other authority.

The argument of the eminent jurist, if put into consideration in the subsequent constitutional amendment, could assist in the war against corruption as judges would hold no fear of the security of their appointments, or undue disciplinary actions.

Another challenge from the judiciary in the effective implementation of AfCFTA is the lack of financial autonomy, adequate remuneration and infrastructural facilities to ease the task of the judiciary, especially at the state level. It is believed that if the judiciary at the federal and state levels could enjoy financial independence, adequate wages and salaries and infrastructure, its performance on corruption war will substantially improve.

4.5 ATTITUDE OF THE BAR TO CORRUPTION CASES

In most cases, the counsel embarks on the use of injunctions to slow down the course of justice. In *Destra Investments Limited v Federal Republic of Nigeria,*[122] Aka'ahs JSC, while delivering the lead judgement detested the practice when it was stated that:

> The appeal is a storm in a teacup. Learned Counsel should expend his energies and knowledge of the law in ensuring the orderly development of society through strict adherence to the rule of law and where a person or company has been accused of an infraction of the law, the duty that the senior counsel owes by the privilege bestowed on him is to help the accused person/company to clear their name

[121] Ibid, 432

[122] (2019) All FWLR (Pt. 1012) (Pt. 1012) (822, Paras D – F).

> through the legal due process and not to seek the impression that his duty is to erect road blocks to frustrate justice from running it course (Paras D-F).

This comment from the Supreme Court speaks volumes of the attitudes of some senior Nigerian lawyers to upholding the path of justice in corruption allegations.[123]

4.6 THE ROLE OF SOCIETY

The critical role society plays in commission, trial and conviction for corruption crimes cannot be underestimated. In ***AG Ondo v AG Federation***,[124] Uwais CJN stated:

> Corruption is not a disease which affects public officers alone but society as whole. If it is therefore to be eradicated effectively, the solution to it must be pervasive to cover every segment of society.

In the *orbiter* of the eminent jurist, the whole society is afflicted with the menace of corruption. But it appears that civil servants are central to the control of corruption in Nigeria because no political or public office holder can commit a corrupt act without the knowledge, connivance or acquiescence of them.[125]

4.7 INEQUITABLE DISTRIBUTION OF RESOURCES

Nigeria is rich in human and natural resources. Nigeria's civil servants are generally not well rewarded by the political class. The wages paid to the public sector workers, relative to the private sector payment, are a source of low-level corruption.[126] The low pay for work in public service predisposes civil servants to use their positions to take bribes as a way of making up for the little income.[127]

In the distribution of natural resources, political leaders, senior public officers in the legislative and judiciary have access to a large proportion of the resources. Under the Land Use Act 1978,[128] land is vested in the Governor for the use of the citizens. But in practice, this land is not available

[123] Josiah Oluwole, 'Why corruption trials of 16 ex-governors linger in Nigerian courts since 2007.' Premium Times (December 13, 2017). Accessed from https://www.premiumtimesng.org on May 5, 2024.
[124] (2002) 7 NWLR (Pt. 722) 306 at 567.
[125] SD Kawu, 'Extermination of Corruption: The Role of the Judiciary' 446.
[126] Yusuf O. Ali, 'The Fight against Corruption in Nigeria Myth or Reality,' in Yusuf O. Ali Anatomy of Corruption in Nigeria: Issues, Challenges & Solutions (Yusuf O. Ali, 2016) 1-31.
[127] Ibid.
[128] Cap L5, LFN 2004.

for residential and productive ventures for the low-income earners due to the tortuous and bureaucratic procedures which must be followed, some of which are laden with corruption. Land in urban centres is mostly allocated to the political leaders, senior public officers and their families and business associates, while it is difficult for those who do not have the necessary "connections" to have access to land allocation.[129] In order to have access to land to site a company, the complex procedure, and the intermediaries in public offices, make the payment of bribes inevitable. A foreign investor may, because of corruption, find it difficult to access land resources to locate his office.

The poor income distribution continually creates opportunities for the public sector leaders to amass wealth, not to talk of other privileges connected illegally by this group. According to the Nigerian Financial Intelligence Unit,[130] the ICPC report released in May 2021 indicated that Nigeria had lost an estimated $400billion to illegal fund flows between 1960 and 1968, which was attributable to corruption, trade mispricing, tax evasion and money laundering, and other illegal methods.

In recent times, the Federal Government had to suspend the Minister and other senior public officers in the Humanitarian Ministry for corruption.[131] The investigator EFCC reported that a sum of about 32.7billion naira and $445,000 had been recovered, while the investigation was still on.[132] This illustrated the extent to which public officers stole national resources. This is a challenge for the implementation of a trade regime that would rely on an interface with the public officers, whose interests were on how to corner public resources for private use.

5.0 CONCLUSION

5.1 SUMMARY

The paper investigated corruption as an impediment to the implementation of AfCFTA in Nigeria. It undertook an overview of the state of corruption, identified challenges corruption in Nigeria

[129] Chike Olisah, CAC uncovers 189 fake companies used for land allocation in Abuja. Naira metrics (November 2023) < https://www.nairametrics.com> accessed 6 May 2024.

[130] Nigerian Financial Intelligence Unit. Assessment of Money Laundering Typologies from Corruption in Nigeria (May 2023) <https://www.nfiu.gov.ng> accessed 6 May 2024.

[131] Chiamaka Okafor. Updated: Humanitarian, Ministry Scandal. Tinubu Suspends Beta Edu. Premium Times (January 8, 2024) <https:// www.premiumtimes.com> 6 May 2024.

[132] EFCC. Setting the Record Straight on Investigations on Humanitarian Ministry (April 14/2024) <https://wwwefcc.gov.ng> accessed 6 May 2024.

posed to AfCFTA and Africa trade and appraised the legal and institutional frameworks for tackling corruption in Nigeria.

It was concluded that corruption was pervasive in Nigeria's public life and that it had impacted negatively on international trade and commitments, not only in Nigeria but in the whole of Sub-Sahara Africa. It was revealed that the menace is sustained by political, economic, social and cultural factors. It was suggested that a wholistic understanding of corruption in Nigeria could only be done taking into consideration the diversity of the nation.

Although legal and institutional frameworks for tackling corruption in Nigeria, and indeed the Sub-Sahara Africa are robust, their functions sometimes overlap and each of them create separate commissions for fighting corruption, which do not help in waging sustainable battle against corruption. The multiplicity of these laws coupled with their regulatory agencies, created more hindrances to the pervasive corruption. Based on the analyses, some of these laws require amendments to streamline them for effective implementation.

The paper also identified and appraised challenges corruption posed to the implementation of AfCFTA in Nigeria to include lack of political will, weak implementation of transparency statutes, independence of the judiciary and the role of the society. It was suggested that political leadership and all other public sector stakeholders should join hands in ensuring that the war against corruption is won

5.2 RECOMMENDATIONS

To implement AfCFTA effectively in Nigeria, a strong political will, followed with strong commitment and leadership by example is required[133]

1. The Nigerian Government needs to sustain its current efforts on the fight against corruption and strengthen the anti-corruption statutes and institutions to harness best practices from other jurisdictions. The agencies should be given requisite legal backing.

[133] Sanusi Lamido Sanusi. 'Curbing Corruption in Nigeria for National Development. Practical Approaches'. in O.S. Adegoke, L. Adamolekun and Adamu B. Muazu (ed.) Employment Generation and Attitudinal Change as Indispensable Tools for Good Governance and Rapid National Development. Proceedings of the 4th Forum of Laureates of the Nigerian National Order of Merit (NNOM) 29th – 30th November,2021.

2. Corruption fighting agencies need to be streamlined and the areas of jurisdiction of existing agencies should be well-defined, because the multiplicity of agencies and over-lapping functions could be counterproductive to the war against corruption among State Parties.

3. The independence of the judiciary under various constitutions of the State Parties should be guaranteed to ensure speedy dispensation of justice.

4.To reduce corruption in trade, there is need for an orientation shift in the public service to perform its role as a neutral and an anonymous agent in the implementation of national and international trade for sustainable national development.

5.Obstacles in the path of trade facilitation, promotion of openness and transparency evidenced in the onerous trade rules and regulations, unfair subsidy regimes and inconsistent tax and property legislations should be reformed to promote ease of trade.

6.Anti-corruption provisions of global and regional bodies such as UNCDC, AUCPCC and ECOWAS Protocol on the Fight against Corruption on due process, trade facilitation and liberalisation and accountability are recommended for incorporation into the operational principles of AfCFTA.

7. State Parties should establish strong domestic legal frameworks to curb corruption and these should handshake global and regional instruments on corruption control to aid the successful implementation of AfCFTA.

COMPARATIVE ANALYSIS OF DEATH PENALTY LAWS IN NIGERIA, CHINA AND UGANDA

Dorcas Adesola Thanni*

Abstract

Conditions of correctional centers in Nigeria has over the years been of concern to relevant stakeholders. It is particularly demeaning for inmates on death row not only because of the poor custodial conditions, but also because of the self-imposed moratorium regime which makes execution very rare. Adopting the desk top research methodology, this paper attempts a comparative examination of the legal provisions and practice of the death penalty in Nigeria and China, an active death penalty country as well as Uganda with its judicial pronouncements on the application of the sentence. The paper highlights the constitutionality of the death penalty in the three countries, and examines the distinct features in the application of the laws.

Nigeria amended its laws to move away from a punitive and retributive position to correction. It provides for the commutation of a death penalty after the inmate must have exhausted all his legal opportunities for reprieve after ten years. This is a far cry from Uganda that recommends a three-year period, considers the mandatory death penalty unconstitutional and is tilting more towards becoming an abolitionist country. Although China remains an active retentionist country, its law and practice remains unique in the practice of the suspended death sentence.

The paper recommends that Nigeria reviews its laws and practice in line with other jurisdictions to achieve the observance of the rights of inmates on death row. It should also consider alternatives such as life imprisonment without the option of parole, life imprisonment not being the remainder of the life of the offender. While it is yet being practiced, death penalty should not be mandatory and correctional officers should be trained and retrained on international best practices in the treatment of inmates on death row. The self-imposed moratorium regime should be reconsidered considering that the death row phenomenon is in itself a breach of the fundamental rights of inmates on death row.

Keywords*: inmates on death row, death penalty laws and practice, Nigeria, Uganda, China*

INTRODUCTION

The death penalty, also known as capital punishment, is the most severe form of sentence, involving the lawful imposition of death on a person convicted of specified offences which are considered grave, such as murder or treason. Gradually, the practice became embedded in global legal systems as a necessary instrument for justice, deterrence, and retribution.

Gradually as arguments on the fundamental human rights of persons gained ascendency, there has been significant global shifts away from its use. The considerations have been, apart from human rights, the risk of wrongful convictions and the fact that research has not been able to establish the advantage of the death penalty over such other alternatives like life imprisonment without the option of parole. Countries that have de facto abolished the death penalty no longer execute or pronounce the death penalty in its courts. The retentionists either restrict the application of the penalty to the most severe or grave offences only or operate a self-imposed moratorium regime, where, although the penalty is not totally abolished, active execution rarely takes place.

Proponents of the retention of the death penalty argue that there is no deterrent against grave offences that is as effective as the death penalty. This school of thought is the retributive school, which opine that a person who takes a life should forfeit his. Abolitionists conversely have their arguments rooted in the requirements of fundamental rights for all persons without discrimination. They consider that the death penalty is so final and irreversible that an error will be too costly in the interest of the justice it was designed to serve. It is better to err on the side of caution.

This paper is a review of the law and practice of the death penalty in Nigeria, China and Uganda, highlighting how they balance the requirements of human rights, delivering justice, deterring would be criminals and upholding the entire criminal justice system while retaining the practice of the capital punishment.

AN APPRAISAL OF THE LAWS PROVIDING FOR DEATH PENALTY IN NIGERIA

The Constitution of the Federal Republic of Nigeria (CFRN) [1] expressly makes provisions for death penalty. Right to life is constitutionally provided for as a fundamental human right under Chapter IV, and the right may not ordinarily be derogated from. The CFRN makes express provisions for instances where this right may be validly derogated from. S33 (1) is relevant here, and it provides that:

Every person has a right to life, and no one shall be deprived intentionally of his life**,** save in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. (Emphasis mine)

This is the principal legislation authorizing death penalty in Nigeria, and the other legislations that will be examined shortly draw their strength from it. The Criminal Code Act [2] is a law generally applicable in the Southern parts of Nigeria for penalizing a variety of offences described therein as criminal acts while the Penal Code Act[3] is applicable in the Federal Capital Territory, Abuja. The various states in the North have their applicable Penal Codes which are substantially similar in provision. The Administration of Criminal Justice Act [4]2015 stipulates the procedure for carrying out the penalty of death while the Nigerian Correctional Service Act[5] stipulates actions that can be taken by the Chief Judge of a State in the case of an inmate under the sentence of death who had spent more than ten years in custody and has exhausted all legal procedures for appeal.

S17 of the Criminal Code Act provides that subject to the provisions of any other written law, the punishments which may be inflicted under this code are death, imprisonment, caning, fine and forfeiture. S315 and S316 provides generally for the imposition of death penalty for the crime of murder. Under Chapter III, the Penal Code provides generally for punishments and compensation. S68 states that:

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[1] S33(1) Constitution of the Federal Republic of Nigeria, 1999.
[2] CAP C38 LFN, 2004
[3] CAP P3 LFN, 2024
[4] Administration of Criminal Justice Act, 2015
[5] Nigerian Correctional Service Act, 2019

(1) The punishments to which offenders are liable under the provisions Punishments of this Penal Code are-

3. death;
4. forfeiture of property;
5. imprisonment;
6. detention in a reformatory;
7. fine;
8. caning.

Chapter XVIII, Penal Code provides generally for offences affecting the human body, and prescribes the death penalty for various acts causing death. Similarly, Chapter XXVI Penal Code providing for offences against the State (treason) provides for the imposition of the death penalty.

From the provisions of these laws, among others, death penalty is lawful in Nigeria when imposed by the appropriate authority for the commission of crimes stated in the prescribed laws. In ***Adeniji v. State,***[6] Oguntade, JCA stated that:

'Besides, the right to life prescribed under the said Section 30(1) of the Constitution is clearly a qualified right. It is not an unqualified right. It is also not in dispute that the imposition or execution of the death sentence in Nigeria is not subjected to any form of arbitrary discriminatory or selective exercise of discretion on the part of any Court or any other quarters whatever. I therefore entertain no doubt that the death penalty in Nigeria can by no stretch of the imagination be said to be invalid or unconstitutional.'

What the laws, however do not make provisions for is the lengthy wait occasioned by the neglect or failure of the appropriate authority to sign the execution warrant of inmates on death row and the human right abuses occasioned thereby.

The Supreme Court, in the case of ***Kalu v. State***[7] stated that if after the death sentence has been passed and the convict is in prison custody, if anything arises outside the normal custody that amounts to 'torture or inhuman or degrading treatment', that will be cause of action under the

[6] (1999) LPELR-6680(CA)
[7] (1998) 13 NWLR (pt.583) p.531

fundamental rights, but not militating against the death sentence. That in such a case, the death sentence stands but a new cause of action has arisen which can be separately enforced and remedied. In other words, that the

'inhuman and degrading treatment' outside the inevitable confinement in death row will not make illegal the death sentence, rather it only gives ground for enforceable right under the Constitution.[8]

Though the death penalty remains a legally valid punishment in Nigeria, this legality does not envisage the inordinate torture inmates are subjected to while awaiting execution, which is not being actively carried out in Nigeria.

There is no evidence on the effectiveness of the death penalty over and above other alternative sentences like life imprisonment, especially where the life imprisonment is without the option of parole.[9] There is need to consider bringing Nigerian laws in consonance with its professed rationale for punishment, considering especially the current world trend of correction and the need to observe the human rights of all persons including prisoners who have committed the most serious offences. The State does not need to turn itself into a pity-less authority killing its citizens because a handful of its citizens are not law abiding.

APPRAISAL OF THE LAWS PROVIDING FOR CUSTODY AND EXECUTION OF CONDEMNED PRISONERS IN NIGERIA

The laws that provide for the custody and execution of condemned prisoners in Nigeria are basically The Nigerian Correctional Service Act, 2019, Administration of Criminal Justice Act, 2015 and The Nigeria Correctional Service Standing Orders Custodial (Revised Edition), 2020.

THE NIGERIAN CORRECTIONAL SERVICE ACT, 2019 AND ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

The Nigerian Correctional Service Act, 2019 (NCSA) is a legislation that changes the nomenclature of punishment in Nigeria. It changes Prison Service to Correctional Service, thereby changing the punitive stance of criminal administration in Nigeria to correction. It makes

[8] Adekunle v. A-G Ogun State (2014) LPELR-22569(CA)

[9] Kovandzic, T.V. et al. (2009) Does the death penalty save lives? New evidence from State panel data, 1977 to 2006. Criminology & Public Policy, 8(4) 803-844

provisions for the treatment of Inmates on Death Row (IDR) in Nigerian Correctional Facilities as well as the procedure for their execution. Administration of Criminal Justice Act, 2015 is the procedural law in the administration of criminal justice in Nigeria.

S12 (1a, b) of the NCSA 2019 provides for the legal powers of the correctional officer to hold custody of the inmate. It states that

(1) Every person confined in a Custodial Center—
  (a) is deemed to be in the legal custody of the Superintendent; and
  (b) shall be subject to discipline and regulations made under this Act, whether or not the person is within the precincts of the Custodial Center.
(2) In the case of an inmate under sentence of death, the Superintendent shall, at such time on the day on which the sentence is to be carried out and from that time until the actual carrying out of the sentence, ensure that--
(a) the inmate is in legal custody of the Sheriff;
(b) the Sheriff has jurisdiction and control over that portion of the Custodial Center where the inmate is confined and the Custodial Officers are deployed, as may be necessary for the safe custody during that period and for the purpose relating to such custody;

The import of these provisions is that though the correctional authority has powers for the legal custody of the IDR, such powers is only up until the day of the execution, on which day legal custody rests on the Sheriff.[10] On that day, the Sheriff assumes jurisdiction and control not only on the IDR to be executed, but also on the correctional officers attached to him for the purpose of the execution and the relevant portion of the custodial center.

The law that empowers the Sheriff to so act is the Sheriffs and Civil Process Act.[11] S12 of the Act provides for the Sheriff to carry out the execution of death on the IDR. It provides that:

Where sentence of death has been pronounced upon any person and the President or Governor as the case may be, has ordered that the sentence be carried into execution, the same shall be

[10] S298, Nigerian Correctional Service Standing Orders Custodial (Revised Edition), 2020
[11] Sheriffs and Civil Process Act, CAP S6, Laws of the Federation of Nigeria, 2004

carried into execution by the sheriff or a deputy sheriff or by some person appointed by the sheriff or deputy sheriff.[12]

Thus, while the duty of execution rests squarely on the Sheriff, the Correctional Officer shall render all necessary assistance to ensure that the Sheriff has a successful execution. Prior to the day of execution, the Superintendent shall ensure that the place where execution is to take place is in good mechanical order, such that the execution will run as smoothly as possible. There should be sufficient stock of such items as rope, pinioning apparatus, hood, bags of sand and thread.[13] This provision suggests that execution mode provided for is by hanging[14] and not also by lethal injection as prescribed by the Administration of Criminal Justice Act, 2015. Whichever mode employed; no execution shall take place except the death warrant is duly signed by the Governor of the State[15] or the President in the case of a federal offence.

Under categorization of custodial centers, the IDR may not be kept in any other custodial center except a maximum (or convict) custodial center, which is such facility with provisions for a death row and can receive all classes of inmates, such as long term, short term, awaiting trial male and female.[16] While undergoing trial, an inmate may be held in any center, but upon conviction, such will be transferred to the appropriate facility, which usually is the maximum custodial facility closest to it.

Furthermore, an IDR cannot be kept together with other inmates who are not condemned even though they are within the same facility. They have to be kept in a separate cell.[17] Adequate categorization of inmates remains a tool for effective administration of the custodial center and management of the inmates. IDR have unique requirements and exigencies, particularly psychological needs. This is why the law requires that unlike other categories of inmates, the Superintendent of the facility and medical doctor shall visit them daily to attend to their peculiar needs. The custodial center keeper shall also make more frequent visits to the IDR

[12] S298, NCS Standing Orders, 2020
[13] S297, NCS Standing Orders, 2020
[14] See S303, NCS Standing Orders, 2020 which directs that casts shall not be taken off the head of an executed inmate.
[15] S299, NCS Standing Orders, 2020
[16] Nigeria Prison Service Lecture Manual. p8
[17] S275 Nigerian Correctional Service Standing Orders Custodial (Revised Edition), 2020

cells.[18] In the absence of this, they may not fare well with other inmates who are non-IDR, and may pose danger to themselves and others. Pending the lawful execution of the IDR, all efforts must be geared towards the preservation of his life and observance of his human rights. Thus, his right to life as provided by the constitution is upheld until lawful execution, which is the only approved derogation. He is also carefully prevented from the commission of further offences because having bagged the most grievous punishment possible, no other punishment may equal whatever new offence that may be committed.

The law provides for the right of the IDR to appeal his sentence, and it is the duty of the Superintendent of the custodial center to bring this to his attention and offer all necessary assistance in the pursuit of such appeal.[19] Upon the exercise of all the legal procedures for appeal, and a period of ten years have elapsed, the Superintendent is required to present such IDR for consideration for commutation of the death penalty to life imprisonment through the State Controller.[20] While on death row, the IDR is subjected to special surveillance which the other inmates are not a subject of. However, all these shall cease if the appeal or application for commutation of the death penalty succeeds.[21]

It remains the law in Nigeria that a pregnant woman, though sentenced to death, cannot be executed until she is delivered of her baby. The relevant provision highlights the effect of discovery of pregnancy at sentencing and at execution respectively. Though a court may validly pronounce a sentence of death on a pregnant woman, execution cannot be carried out. S404 Administration of Criminal Justice Act provides that:

> Where a woman found guilty of a capital offence is pregnant, the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned.[22]

It remains unclear, however, how a female inmate under the custody of the superintendent of correction can or may become pregnant, especially because conjugal visits are unknown to our laws. Also, considering the requirement for proof of criminal complicity beyond reasonable

[18] See s287, NCS Standing Orders, 2020
[19] See s276, NCS Standing Orders, 2020
[20] See s275 (b) NCS Standing Orders, 2020
[21] S297, NCS Standing Orders,2020
[22] See also S39 (2) Criminal Code Act 2004

doubt, and the history of protracted trial bedeviling our criminal justice, it is very unusual that a criminal trial for capital offence may be concluded within nine months, or less. Discovery of pregnancy at sentencing presumes that the pregnancy was not obvious, else the judge would have made the appropriate orders. It is the opinion of this study that discovery of pregnancy either at sentencing or execution speaks of dereliction of duty on the part of the Superintendent of Correction or his subordinates at one point or the other. The Nigerian Correctional Service Standing Orders Custodial (Revised Edition)[23] provides for the treatment of pregnant inmates, but did not contemplate a pregnant IDR.

THE NIGERIAN CORRECTIONAL SERVICE STANDING ORDERS CUSTODIAL (REVISED EDITION) 2020

The body of rules guiding the day-to-day running of custodial centers in Nigeria is the Nigerian Correctional Service Standing Orders Custodial (Revised Edition)[24]. This is a subsidiary legislation which derives its strength from the Nigerian Correctional Service Act, 2019. S33 of the Act empowers the Controller General of Correction to make regulations, standing orders and take any other administrative action as required for the effective implementation of the Act. Although the 2020 Standing Orders did not start with a commencement section, the old standing orders in its commencement section states that the orders represent the day-to-day rules and regulations guiding the prisoners, staff, administration of prison and organization and control.[25] As earlier stated, the Standing Orders made copious provisions for the treatment of IDR.

Female inmates undergo pregnancy tests not later than 14 days of being admitted into the custodial center.[26] In the event of discovery of pregnancy, apart from provision of all necessary support, the committing court and the next of kin shall be duly informed. As long as this requirement is complied with, it is very unlikely that a pregnant woman will be found on death row. In the rare event that it occurs, the Administration of Criminal Justice Act[27] provides that the execution shall be suspended until the baby is delivered and weaned.

[23] See Order 11, 562-573
[24] Nigerian Correctional Service Standing Orders (Custodial) Revised Edition 2020
[25] Commencement section of the NPS SO (Revised Edition), 2011
[26] See S564 NCS Standing Orders, 2020
[27] S404 Administration of Criminal Justice Act, 2015

COMPARATIVE ANALYSIS OF THE LEGAL PROVISIONS IN OTHER JURISDICTIONS PRACTICING DEATH PENALTY

CHINA

The choice of China in this study is premised on the fact that China topped the world in the imposition of the death penalty. According to Amnesty International, China's death sentences and executions have consistently contributed 60-80% of the total death sentences and executions in the world.[28] China ranks among the top five executioners in the world.[29] In 2016, China executed more than all other countries in the world put together.[30] China has a rather long history of imposition of the death penalty, being embedded in its traditional culture. Though the imposition of death penalty can be traced in the traditional history of Nigeria, its practice is quite different from what obtains in China. Pre-Colonial practice of death penalty in Nigeria is only as a last resort and other alternatives were adopted wherever possible.[31] Chinese traditional sayings like "a life for a life," "killing one to warn a hundred," "killing a chicken to warn a monkey" are embodiments of these retributive and deterrent beliefs[32]. While it is yet unlikely that China will abolish the death penalty, its official policy on the death penalty has been to prevent excessive execution and execute with caution. The Supreme Court had been reassigned the task of making a final review and approving all death sentences in 2007. This has been widely viewed as an effort to implement the death penalty with uniformity, fairness, and caution.[33] The current Criminal Law stipulates 68 criminal offenses eligible for capital punishment, although it has been argued that most of these provisions are rarely used.[34] About one third of the capital offenses have rarely been used in practice while

[28] Hong L.U. 2008. China's death penalty: Reforms on capital punishment.
[29] Amnesty International. 2017. Death Penalty: World's biggest executioner China must come clean about 'grotesque' level of capital punishment. Accessed 14 April, 2025 from https://www.amnesty.org/en/latest/news/2017/04/china-must-come-clean-about-capital-punishment/
[30] Ibid
[31] Aborisade, O. 2016. Interrogating Capital Punishment and Indigenous Yoruba African Culture. International Journal of History and Philosophical Research. Vol.4., No.2, pp.23-29. Accessed 14 April, 2025 from https://www.eajournals.org/wp-content/uploads/Interrogating-Capital-Punishment-and-Indigenous-Yoruba-African-Culture.pdf
[32] Amnesty International. 2008. Op cit
[33] Ibid
[34] Ibid

another one third consisted of nonviolent, non-lethal offenses such as corruption, economic offenses, and public order offenses.

These 68 offences have been categorized into crimes endangering national security, crimes endangering public security, crimes undermining the socialist market economic order, crimes infringing upon the rights of the person and his democratic rights, crimes encroaching on property, crimes disrupting the order of social administration, crimes endangering the national defense interest, crimes of graft and bribery, crimes of violating duties of military servicemen.[35] However, not all of these offences carry the mandatory death sentence. Only those offenses which meet certain aggravating conditions carry a mandatory death sentence e.g. drug trafficking.

CHINA'S DEATH PENALTY UNIQUE CHARACTERISTICS

Much like what is operational in Nigeria and some other jurisdictions, China does not extend the application of the death penalty to minors and pregnant women and makes legal representation for capital offenders mandatory. A unique feature however is suspended death sentence, which may be used when an offender should be sentenced to death but immediate execution is considered not essential. This is in line with China's policy of preventing excessive executions and executing with caution.[36] Under China's suspended death sentence regime, a two-year reprieve is pronounced simultaneously with the death sentence where the judge considers that immediate execution was not essential and the criminal is given opportunity for reformation. This provision confers discretion on the judge. During this period, there are three possibilities.[37] Where it is determined that the condemned had shown true repentance, the sentence will be commuted to life imprisonment. Where in addition to showing true repentance, the offender had performed meritorious service, the penalty may be reduced to a fixed term of fifteen to twenty years. However, where it was decided that the offender had resisted reform, such will be executed by shooting.

Unlike what obtains in Nigeria, the time spent on the death row is relatively short. According to China's Criminal Procedure Law (1996), 'after receiving an order to execute the death sentence

[35] Ibid
[36] Hong, L.U. 2008. Op cit
[37] Seet, M. 2017. China's suspended death sentence with a two –year reprieve: humanitarian reprieve or cruel, inhuman and degrading punishment? NUS Law working paper. Accessed 14 April, 2025 from https://law.nus.edu.sg/wp-content/uploads/2020/04/006_2017_Matthew-Seet.pdf

from the Supreme People's Court, the people's court at lower levels shall, within seven days, deliver the criminal for execution of the sentence.'[38] The Supreme Court of China was in 2007 entrusted with reviewing cases given a death sentence and has recruited and trained a large number of judiciary officers for its expanded criminal division. This step was to re-affirm the policy of preventing excessive executions and execution with caution. Other steps taken in pursuit of this policy include setting up long term prison sentences; restricting the scope of capital offenses; curbing police torture and coerced confession; and making death sentence decisions more uniform and fairer by going through the central authority for the final review and approval of capital cases. It was argued that the reason why death penalty was used frequently in China was because there were no other comparable alternatives. Currently by law, the longest prison sentence is 15 years. Even though life imprisonment is available, the average time an offender served behind bars with a life imprisonment sentence is 15 years. Thus, it is important to set up longer prison terms (i.e., 20-30 years), or to make life imprisonment without the possibility of parole an option, so as to reduce the need for the death penalty. The case is different in Nigeria where life imprisonment is actually the whole remainder of the life of a prisoner. This study condemns the lack of specificity of the period of life imprisonment in jurisdictions that practice it as such.

There are two execution methods in China: execution by shooting or by lethal injection. Lethal injection was introduced in 1997 and in remote western regions first, and then gradually implemented in other jurisdictions. Hanging is the most common mode of execution in Nigeria[39].

UGANDA

The choice of Uganda is due to the great influence the judicial legislation embarked upon by its Supreme Court has had, not only on the country itself but also on other African countries. The decision in Kigula's case has occasioned massive abolitionist moves, though the country is yet a retentionist country.[40] Unlike Nigeria, judicial legislation has paved a smooth way for the abolition

[38] Ibid

[39] Akingbehin, E.O. 2012. Capital Punishment in Nigeria a Critical Appraisal. A Thesis Submitted to University of Lagos School of Postgraduate Studies Phd Thesis and Dissertation, 285pp. Accessed 14 April 2025 from https://ir.unilag.edu.ng/items/b81e7098-7c70-44fb-a0a7-e4143504dafa

[40] Mujuzi, J. D. 2009. International Human Rights Law and Foreign Case Law in Interpreting Constitutional Rights: The Supreme Court of Uganda and the Death Penalty Question. 2 AHRLJ. 576-589. Accessed 14 April, 2025 from https://www.ahrlj.up.ac.za/mujuzi-jd-2009-2

move in Uganda. The decision in the landmark case of Suzan Kigula and 417 Ors[41] has only proven in Uganda that although the death penalty is constitutional, other related issues such as the duration between pronouncement and execution, and the mode of execution may be unconstitutional. In this case, the entire 417 inmates on death row had petitioned to have the death penalty declared unconstitutional and abolished.[42]A serious case was similarly made for the mandatory death sentence which fetters the discretion of the judge and an appropriate amendment of the constitution.[43] From this judgement, dicta in favor of abolition of the death penalty were enunciated.

'Courts are compelled to pass the death sentence because the law orders them to do so but not all the offences can be the same.' Justice Okello, leading Justice.

Justice Amos Twinomujuni added that 'it is the duty of the judiciary to impose any sentence after due process.'

Apart from being a precedent of strong persuasive value within the region of Africa, the decision in Kigula's case has restored judges' discretion, removed mandatory death penalty, proposed a reduction in the offences that attracted the death penalty and redefined the scope of life imprisonment. This invariably led to the reduction in death row inmates as seen earlier.[44]

Article 22(1) of the Ugandan Constitution provides that no person shall be deprived of life intentionally, except in execution of a sentence passed by a Court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court. This means that much like what obtains in Nigeria, the Ugandan Constitution provides for the legality of the death penalty. The difference however lies in the fact that Uganda had been more actively involved in the move towards an abolition, through a Constitutional review and judicial legislation. In the celebrated Kigula's case, the Supreme Court of Uganda had made pronouncements on the constitutionality of the death penalty, unconstitutionality of the mandatory death penalty because it robs judges of discretion in

[41] (2005) AHRLR 197 (UgCC2005)
[42] Mujuzi, J.D. 2009. Op cit
[43] Full judgement available at https://www.fidh.org.IMG.pdf.Supremecourt
[44] Amnesty International. 1993. Uganda the death penalty: a barrier to improving human rights. AI Index: AFR 59/03/93

mitigating sentences, that hanging as a mode of execution is not cruel and inhuman, and that the death row phenomenon is unconstitutional because it is cruel and inhuman treatment.[45]

In 2001, a Constitutional Review attempt was made, the result of which was not ready until 2004, though a retention was favored.[46] According to Amnesty International, there were at least 525 inmates on death row in Uganda in December 2004. This figure has however declined in recent years. By 2013, there were 420 death row prisoners, 167 of which were to receive re-sentencing under the Kigula judgment. By March 2016, this figure has further reduced to 208.[47] Presently, the figure has reduced further to about 145 persons. The country also has a Human Rights Commission, which though did not recommend an abolition to the Constitutional Review Commission but did recommend the reduction of the offences that attracted the death penalty to exclude especially political offences.[48]

Uganda is a state party to seven of the major International Human Rights treaties (the ICESCR, the ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families),[49] as well as to the First Optional Protocol to the ICCPR and the two Optional Protocols to the Convention on the Rights of the Child (on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography), the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' rights on the establishment of an African Court on Human and Peoples' rights).[50] Uganda is also a party to the main international humanitarian law instruments, in particular the Geneva Conventions of 12 August 1949 for the

[45] Mujuzi, J.D. 2009. Op cit
[46] FIDH. 2005. Uganda: Challenging the Death Penalty-International fact-finding mission. Available at www.fhri.or.og
[47] Cornell Centre on the Death Penalty Worldwide. Death Penalty Database. Uganda. Available at https://www.deathpenaltyworldwide.org
[48] Op cit
[49] Mujuzi, J.D. 2009. Op cit
[50] Ibid

protection of victims of war, and the Additional Protocols thereto, of 1977.[51] Reference to international instruments significantly influenced the decision in Kigula's case. This portrays a commitment on the part of the country to the human rights requirements of the international criminal justice system which is expected to receive a domestication, especially as it relates to the abolition of the death penalty.

Another unique outcome of the Kigula's case is that the court ruled that any IDR who had been so for 3 years without execution should have the sentence automatically commuted to a life imprisonment without the option of parole. This is quite different from Nigeria where an IDR must spend a minimum of ten years before becoming eligible for commutation of sentence.

It is noteworthy that the majority of Ugandan population favors a retention, but the prison officers mostly advocate for an abolition. It had been suggested that this is likely due to their involvement in the execution process.[52] The reason for the support by the executive is rather based on facts and not on emotional and psychological attachment to condemned prisoners. The executive has decided in favor of retention because death penalty had been a very effective means of checking gross human right abuses that were prevalent in Uganda.[53] Article 129 of the Constitution provides for hierarchy of courts, which invariably provides for the right of appeal of the condemned prisoner.

The Penal Code provides the death penalty for offences such as Treason, Smuggling, Murder, Detention with sexual intent, Kidnapping, Rape, Defilement and Robbery. The offences of murder, treason and aggravated robbery attract a mandatory death penalty on conviction. Comparable to the Nigerian situation, the increase in certain kinds of offences (kidnapping and terrorism) led to the expansion of the scope of the death penalty. Under the Terrorism (Prevention) Act[54], additional offences are punishable by a mandatory death sentence. Sections 7 and 8 of the Act defines the offences that amount to terrorism and the death penalty on conviction where the act leads to the death of any person. Due to the unprecedented increase in the spate of the criminal activity, the

[51] Ibid
[52] Mujuzi, J. D. 2009. Op cit
[53] Ibid
[54] Terrorism (Prevention) Act, 2011

Terrorism (Prevention) (Amendment) Act[55] introduced several sections to deter the increase and adequately punish perpetrators. Banditry and kidnapping have become increasingly frequent occurrences in Nigeria, a 'thriving business' for men of the underworld, posing a serious threat to the safety and security of citizens in their homes, farmlands, and along major highways.[56] Studies have shown that banditry is largely driven by the pursuit of wealth in regions burdened by poverty, significantly compromising public safety and security in the states examined.[57] Among several innumerable occurrences, notable incidents include the abduction of 204 Chibok Secondary School girls in 2014, the kidnapping of Dapchi schoolgirls in 2018, the Owo Catholic Church massacre in 2022, and the Kaduna–Abuja train attack in the same year.[58] Although the Federal Government has made efforts to address the deteriorating security situation, such initiatives appear insufficient and overstretched. The immediate response of legislature was to introduce the death penalty with the hope that willing perpetrators will be deterred and security of lives and properties of Nigerians will be secured.

Article 121 of the Constitution of the Republic of Uganda provides for the Prerogative of Mercy. Pursuant to Article 121(1) of the Constitution, the Committee consists of the Attorney General and six prominent citizens of Uganda appointed by the President who should not be members of Parliament, members of the Uganda Law Society or of the District Council.

The Uganda Prisons Act of 1958 Cap 304 Laws of Uganda 2000 is an Act that consolidates the law relating to Prisons and provides for the organization, powers and duties of prison officers, and for matters incidental thereto. There are two parallel systems of criminal justice in Uganda, each with its own method of execution. Military execution is by firing squad while S 99(1) of the Trial of Indictments Act (Cap 23 Laws of Uganda) provides hanging as the legal means of execution. The Uganda Prisons Act provides for the establishment of a Ugandan Prison Service with reformation, rehabilitation of offenders, safe and secure custody of inmates as its mandate. There is also The Ugandan Prisons Service Policy Document 2000 and Beyond which sets out the

[55] Terrorism (Prevention) (Amendment) Act, 2013
[56] Igiebor, G.O. 2024. Banditry in Nigeria: Implications for National Security. African Journal of Politics and Administrative Studies, AJPAS, 17(2): 1-26 Accessed 15 April, 2025 from https://dx.doi.org/10.4314/ajpas.v17i2.1
[57] Ibid
[58] Ibid

mission statement of Prisons Service of Uganda, as part of an integrated justice system. A major feature of this document is humane treatment of all categories of inmates. This is in line with the requirements of international treaties to which Uganda is a signatory.

RECOMMENDATIONS

It is recommended that Nigerian courts, through its judgements review the country's stance on the death penalty. While it may retain its use, application must be in line with international requirements for observance of the human rights of all citizens, including inmates and IDR. Alternatives to the death penalty, such as life imprisonment without the option of parole can be introduced especially where there are signs of the possibility of rehabilitation upon the recommendation of the Superintendent of the correctional center. The legal provisions for review of death penalty after the inmate had been on death row for ten years is inappropriate, being too long, since no corrective measure or activity can take place during this 'wait period'. The period during which the inmate may explore and exhaust his appeal should be expediated such that considerations for commutation can be explored. Correctional officers should be properly trained on the implications and application of the sentence. The retention of the death penalty in the absence of active execution is a breach of the human rights of IDR. The death row phenomenon which sets in after all rights to legal appeal has been exhausted is a breach of the rights of the inmates. The time between sentence and execution should be reduced reasonably. There should also be a review of the extent of the life imprisonment which should not be the entire remainder of the life of the offender.

CONFLICT ON THE CHOICE OF MARRIAGE AND THE EFFECTS ON THE DISTRIBUTION OF A DECEASED ESTATE IN NIGERIA AND SOUTH AFRICA

Omoshola Abiodun Akingboye* and Itunu Kolade-Faseyi**

Abstract

The delusion of the superiority of the English law over the Nigerian customary laws, with the belief that indigenous legal systems are uncivilized, primitive and inferior, are false. A nation's legal system cannot be divorced from its social realities, norms, values and religions. Thus, it is unethical by way of legislation to force the values and faith of a nation on another. The problem of conflict of choice of marriage stems from the mindset that the English marriage system is superior to customary mode of marriage and succession in Nigeria. The need for legal reforms of indigenous legal system should not be borne out of a feeling of inferiority but a need to balance competing social interest on the scale of equity, non-discrimination and fairness. This paper adopts a doctrinal approach in analyzing rising conflicts in Nigerian legal pluralism in the choice of marriage and its effect on the distribution of a deceased estate who died intestate and the approach of the court in resolving such conflict by first determining the status of parties under a marriage system and the actual legal regime that should regulate their affairs, including intestate succession. This study compares the South African Marriage regime with that of Nigeria and seeks to draw lesson points which can aid Nigerian Courts in resolving rising conflicts.

Keywords: Customary Law, English Law, Intestate, Marriage, Pluralism, Succession.

1.0 INTRODUCTION

The Nigerian legal pluralism is birthed out of its multiple ethno-religious practices, and the integration of English laws with multiple Nigerian legislations. This intermix which is recognized and validly upheld has made the legal system somewhat complex.[1] The marriage institution like every other sector, is regulated by this pluralistic system which results in conflict. This occurs because demand is placed on an individual by different legal bodies with competing claims of

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[1] S.A. St. Emmanuel. 'Legal Pluralism: An Examination of Conflicting Standards in Statutory, Customary and Islamic Law Marriage in Nigeria' (2021) (4) (1) *Ajayi Crowther Law Journal,* 1.

authority, placing such individual in a state of uncertainty about which law should regulate his marital affairs.[2]

The consequent value and significance of the marriage institution in Nigeria and many African societies have resulted in a multi-faceted conflict that arises from parental consideration, cultural diversity and preferences, pressure from society, religious differences, economic status, social status, preference on the type of marriage, etc. These differing perspectives and preferences influence marriage choices. When and after parties decide to get married despite conflicting expectations, they are faced with the choice of a system of marriage formalities. Some party's choice of a marriage system ceremony is based on the glamour and excitement of its ceremony not considering the legal implications of their action. While some are aware of the legal implications, they damn the consequences and choose to live the way they deem fit. The pluralistic legal frameworks regulating marriage aid conflicts in the choice of marriage in Nigeria, conflict in family customary practices and religious expectations.

This paper is divided into nine parts, the first part being the introductory part sets the tone for the various arguments that are canvassed in the paper. Part two critically examines the concept of marriage while part three discusses the conflict of laws as it relates to choice of marriage in Nigeria. Part four analyses the available succession laws and principles in Nigeria. The case of ***Mohammed v Mohammed***[3] which is a departure from the decision made in the locus classicus case of ***Cole v. Cole***[4] was analyzed in this section of the paper. Parts five and six looked at choice of marriage and intestate distribution under South African Laws respectively. The choice of South Africa was borne out of the fact that it shares the same commonwealth origin with Nigeria. Part seven considers the legal regime on marriage and intestacy both in Nigeria and South Africa, attention was drawn to the fact that the regimes differ significantly from each other. The learning points from South Africa

[2] D. Odunniake, 'Marriage in Nigeria: The Dilemma of Legal Pluralism' (2014).
[3] (2024) LPELR-62831(CA).
[4] (1898) 1 N.L.R 15.

were drawn in this part of the work. While part eight concludes the work, part nine articulates general recommendations to resolve conflicts that usually arises as a result of marital choices.

2.0 THE CONCEPT OF MARRIAGE

Marriage as an institution is of ancient origin, it is said to be one of the oldest institutions in the world.[5] There is hardly any country of the world where marriage is not conducted. Its incidences may differ or vary from one community, society, religion or culture to another nonetheless it is recognized as an institution which grounds the society/family. Marriage is considered as the voluntary union for life of one man and one woman to the exclusion of all others.[6] This form of marriage, known as monogamous marriage, is regulated by the provisions of the Marriage Act.[7] Monogamous marriage is the form received from the English conception of marriage, and recognized under the Marriage Act. The voluntariness of the union presupposes an agreement or contract between consenting adults, lack of which will render the marriage a nullity. The union intended to be a lifelong commitment, sometimes ends up in separation. That the marriage is to the exclusion of all others is key, as a violation of this element can lead to the crime of bigamy, allegations of adultery and a likelihood of dissolution of the marriage. The general purpose of the monogamous marriage is that once a person is married, such individual is ineligible to contract another marriage in his or her lifetime while the monogamous marriage subsists and the other partner lives.[8]

The union between one man and more than one wife is also a recognized form of marriage in Nigeria under the Customary and Islamic legal systems. While they seem similar, the customary law marriage is marriage according to traditions and customs where the man has the right to an

[5] See *Marriage: A Foundational Institution of Society* https://www.cliffsnotes.com/study-notes/23399541 and B. Herre and 3 others, *Marriages and Divorces* https://ourworldindata.org/marriages-and-divorces (accessed 16 April 2025).

[6] Per Lord Penzance in *Hyde v Hyde* (1886) LR 1 P & D, 130, at 133. See also section 18, Interpretation Act Cap I 23 LFN 2004.

[7] Cap.M6, Laws of the Federation of Nigeria (LFN) 2004.

[8] M.A. Lateef, and N.K. Adegbite. 'Bigamy and Dearth of Prosecution in Nigeria.' (2017) (1)(1) *Obafemi Awolowo University Journal of Public Law*, 91-117.

unlimited number of wives. Under Islamic law, a man can take on as many as four wives as long as he can take care of them and love them equally.[9] It is a tradition in Africa to place great importance on the family unit. Individuals wishing to get married usually fulfil the customary law marriage requirements, irrespective of their religious inclinations or educational status.[10]

The system of marriage in Nigeria possesses certain qualifications, akin to all types of marriages, meant to validate the marriage such as the presence of consent (of both parties and parents), capacity as to age, capacity as to economic status, payment of bride price, formal solemnization in public with witnesses etc. These qualifications are recognized under the Marriage Act as lawful in attaining a valid marriage.[11] However, everyone has a right of choice, to choose the type of marriage they want to be bound by. A party's choice of marriage determines the rules of engagement they will be bound with, not only in the formal ceremonial celebration but also in the conduct of their marital affairs.

3.0 CONFLICT ON THE CHOICE OF MARRIAGE IN NIGERIA

In Nigeria, it is common for couples to simultaneously conduct both statutory and customary law marriage often resulting in confusion over which legal framework should govern their marital status. They go through traditional marriage ceremony in one day, proceed to the Marriage Registry the next day to obtain the Marriage Certificate or they obtain the Marriage Certificate in the morning and in the afternoon go through the customary law marriage ceremony.

The traditional African society primarily recognizes the customary law marriage as the authentic ceremony. It gives credence to the union of both families of the bride and groom, rather than that of the couple. Statutory marriage is seen as a mere formality for providing evidence of marriage by issuance of a Marriage Certificate, which will become needful for documentation in other

[9] See Quran 4:3.

[10] P.A. Akhihiero, 'An Abridgment of Nigerian Matrimonial Laws and the Church*'* Paper presented at the seminar organized for the members of the Marriage Committee of the Deeper Life Bible Church"3. https://edojudiciary.gov.ng/wp-content/uploads/2016/10/An-Abridgement-Of-Nigeria-Matrimonial-Laws-And-The-Church.pdf, (accessed on 18 February, 2025).

[11] Section 35 of the Marriage Act.

formal engagements such as education, employment, visa application etc. This duality raises questions about how the choice of marriage type influences a person's entire life's dealings- his family structure, succession, and home management within the context of the traditional African beliefs, values and norms.

The court in ***Cole v Cole***[12] highlighted the significant legal implication of one's choice of marriage type. The court emphasized that "*Christian marriage imposes obligations that may not be recognized by native law… In fact a Christian marriage clothes the parties to such marriage and their offspring with a status unknown to native law."* Despite this decision, tension continues to arise from the interplay between statutory marriages and customary law marital relations. The lives and decisions of the average Nigerian man or woman is still influenced by custom, with the extended families playing important roles in the nuclear families. Extended families are crucial in various situations such as acceptance of a person into a family, legitimization of a child, indirect contribution of uncles and aunties to the child's well-being; supporting spouse to maintain marital harmony etc.

Conflict arises in cases of 'double-deck' marriage where individuals marry under both statutory and customary law marriage system.[13] The problem with a double decked marriage is that it becomes difficult to determine the legal status of the parties as the legal framework does not straightforwardly resolve the rising conflicts. Section 35 of the Nigerian Marriage Act specifies that those married under the Act cannot contract a valid marriage under customary law. The Act does not invalidate a previous customary law marriage but acknowledges it as valid. If a statutory marriage occurs after a customary law marriage, the statutory marriage is viewed as overriding the customary marriage, changing it from a polygamous to monogamous one. The situation may differ if a customary marriage occurs after a statutory marriage, raising questions about which legal system applies to the couple's responsibilities. This determination would ultimately be made by the court on the basis of the way of life of the couple in question.

[12] [1898] 1 N.L.R. 15.
[13] M. C. Onokah. *Family Law* (Spectrum Books Limited, 2007) 143.

No doubt, it is popular practice in Nigeria for parties who desire a statutory marriage to marry first under customary law before the solemnization of the statutory marriage.[14] This practice is based on the fact that western civilization have permeated Nigerian society, though most people are still understandably bound by the customary law of their place of origin. The Nigerian Marriage Act validates this practice by enabling persons who are married under customary law to marry each other under the statute with the implication that the statutory marriage gains preeminence over the customary law marriage.[15]

In the eyes of the law, a customary law marriage is a complete and a perfect marriage. The matrimonial union is legitimate and need no further contract under the Act. Most people further proceed to contract statutory marriage as a safety measure to prevent polygamy because they know that customary law marriage is potentially polygamous.[16] The practice of double deck marriage has been judicially noticed by courts in Nigeria. In the case of ***Jadesimi v Okotie-Eboh & 2 ors*,**[17] the court opined that it is never intended by the practice that the marriage under the Marriage Act should nullify the customary marriage, rather it would supplement the practice or custom. The parties are however aware that by contracting under the Marriage Act their marriage would become monogamous.[18]

Questions with regards to the value placed on customary law arises at all times as it is constantly viewed as subordinate to the English Law. Sometimes, the court's reaction to questions of which system of law is applicable to parties' marital affairs is usually determined by the status of the parties and the facts of the case.[19] While a statutory marriage following a customary marriage can undermine the latter's polygamous status, the reverse situation lacks a clear legal resolution.

[14] E.I. Nwogugu, *Family Law in Nigeria* (Revised Edition) (Heinemann Educational Books (Nigeria) Plc, 2014), 66-67.
[15] E.I. Nwogugu, *op cit* 66.
[16] P. A. Akhihiero, *op cit*, 3.
[17] (1996) 2 NWLR (pt. 429) 128.
[18] *Per Uwais, C.J.N*, (1996) 2 NWLR (pt. 429) 128
[19] E.A Oji, and N. Iguh, 'Conflict of Laws in Nigeria' in G.C Nwakoby, K.C Nwogu, and M.N Umenweke (eds), *Fundamentals of the Nigerian Legal System* (Nnamdi Azikiwe University, 2010) 91-110.

Under the Act, if a person has a previous customary marriage with another party before entering a statutory marriage, the latter is void. [20] However, if same parties got married under the two systems of marriage, the statutory marriage remains valid and converts the customary polygamous arrangement into a monogamous one. The section also reflects the common practice in Nigeria where men marry under statutory law but maintain multiple wives through customary practices. This often leads to frustration for women who believed they were marrying monogamously.[21] Marriage under the Act explicitly prohibits a person already married under its guidelines from marrying another person under customary law, labeling such actions as bigamy punishable upon conviction with imprisonment for five years.[22]

The courts have consistently upheld the illegality of marrying a third party while a statutory marriage is still in effect. In the cases of ***Towoeni v. Towoeni***[23] and ***Taiga v. Taiga***,[24] it was emphasized that under Section 35 of the Marriage Act, a person with a subsisting statutory marriage cannot validly enter into another marriage under native law and custom while the first marriage is still active.

It is noteworthy that Section 47 of the Marriage Act has never been enforced in Nigeria because of societal outlook to bigamy in marriage. Despite its criminalization,[25] the offence of bigamy is rarely reported or enforced.[26] The rationale for this is that traditional African society recognizes

[20] See Section 33 Marriage Act which provides that: 'No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married under customary law to any person other than the person with whom such marriage is had.'

[21] M. C. Onokah, *op cit,* 145.

[22] See Sections 35, 46 & 47 of the Marriage Act. See the case of *Lawal-Osula v Lawal-Osula* (1993) 2 NWLR (Pt 274) 158.

[23] (2001) LLER- 246195 (CA).

[24] (2012) LLER-67608 (SC).

[25] Upon conviction for the offence of bigamy, the offender is liable to imprisonment for seven years. See section 370 of the Criminal Code.

[26] The only two reported cases of Bigamy in Nigeria are *Rex v. Inyang and Rex v. Princewill. Rex v. Inyang* (1931) NLR 10, P. 33; the facts are that Mr Inyang married one Evelyn Eliza Darvell on 15th March, 1923 in the registry office at Hammersmith, London. While this marriage subsisted, he went through another marriage under the Act on 25th October, 1928 at the United Free Church, Duke Town, Calabar, with one Nya Eniang Esien. Years after the

and condones the polygamist nature of the male folk. Many married women are compelled to condone such offensive actions, because they do not want to referred to as a divorcees, losing their self-respect in the society, and more importantly to protect the interest of their children where they are not economically sufficient.[27] The long run effect of this permissiveness surfaces at the point of inheritance and succession, with a battle for who should or should not be entitled to a deceased estate, where he dies intestate.

4.0 DISTRIBUTION OF A DECEASED ESTATE INTESTATE

Succession involves rules regarding the distribution and management of a deceased person's estate, encompassing not just transmission of property but also of ownership rights and responsibilities transferred to heirs, typically including children, spouses, and other dependents.[28] In cases where a Will exists, distribution follows the directives of that Will, this is also known as testate succession.[29] The Testate succession is regulated by various legal framework especially when the marriage of the deceased and his/her spouse was contracted under statutory law.[30] However, when a person dies intestate, the distribution is governed by local laws, varying based on the deceased's marital status and applicable statutory or customary laws; though in Nigeria intestacy is largely regulated by native law and custom.[31] When a person who is subject to customary law dies intestate, native law applies.[32]

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case of R v. Princewell was decided, another bigamous case came up, though unreported. (Extracted from M. A Lateef and K. Adegbite, 'Bigamy and the Dearth of Prosecution in Nigeria' (2017) *OAU Journal of Public Law,*9.

[27] M. A. Lateef and K. Adegbite, 'Bigamy and the Dearth of Prosecution in Nigeria' (2017) *OAU Journal of Public Law*, 1-25.

[28] A.C Diala, Reform of the Customary Law of Inheritance in Nigeria: Lessons from South Africa (2014) 14 AHRLJ 633-654

[29] M.T Otu, and M. Nabiebu, 'Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis' (2021) (62) (2) European *Journal of Social Sciences,* 50-63.

[30] Generally, principal laws governing testate inheritance include the Marriage Act, the Administration of Estates Law of 1959, the Succession Law Edict of 1987 (as amended by South-East States), the English Wills Act of 1837, and the Wills Amendment Act of 1852 (generally applicable except in the south-west). Others are the Wills Law of 1959 (south-west), the Wills (Soldiers and Sailors) Act of 1918, and the Wills Law of old Bendel State. etc.

[31] M. T Otu, *ibid*, 63.

[32] A. C Diala, *op cit*, 640.

In Nigeria, intestate succession lacks uniformity, but some general rules apply:[33]

a) Immovable property is governed by *lex situs*, the law of the place where the property is located. If the property is based in states created out of the former Western Region or the defunct Bendel state, the Administration of Estates Law of 1959 applies when customary law does not apply. If the property is based in any of the northern or eastern states, English common law applies, as laid down in ***Cole v Cole*.**[34]

b) Movable property is governed by the law of domicile of the intestate at the time of death.[35] If the intestate died domiciled in states created out of the former Western Region, the Administration of Estates Law applies. If he dies in any of the northern or eastern states, the law of the state in which he died applies with respect to movable property.[36]

c) Where the property is subject to customary law, or the deceased was married under customary law, customary law applies.

Generally, persons married under statutory law are expected to follow the Marriage Act, which defines their rights and obligations. The same goes for another who is married under customary law, while Islamic law regulates succession only amongst Muslims in the country.[37] However, conflicts can arise when a man married under statutory law takes additional wives under customary or Islamic law. In cases where he dies without a will, questions emerge about how to distribute his estate—whether to favor the legally recognized wife or to include customs that acknowledge other wives and their children.

In ***Salubi v. Nwariaku*,**[38] the supreme court set aside judgment of the appellate court and held that the applicable law to the distribution of the estate of an intestate who died leaving a spouse and children is the Administration of Estate Law. The reasoning of the court was hinged on the principle that where there is conflict between the English common law and provisions of a regional

[33] P.O Itua 'Legitimacy, Legitimation and Succession in Nigeria: An Appraisal of Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) on the Rights of Inheritance' (2012) (4) *Journal of Law and Conflict Resolution* 36.

[34] *Cole v Cole* (1898) 1 NLR 15 is authority that when a person who contracted a Christian marriage outside Nigeria dies intestate while domiciled in Nigeria, the English common law governs the distribution of his estate. Extracted from Anthony C Diala, *op cit*, 16.

[35] *Tapa v Kuka* (1945) 18 NLR 5; *Zaidan v Zaidan* (1974) 4 UILR 283.

[36] A.C Diala, *op cit*. 640.

[37] T. Oladipo, 'Intestate Succession in Nigeria' (2009) (5) *Business Law Digest, 1-8.*

[38] (2003) 7 NWLR (pt. 819) 426.

law on distribution of intestate estate, the latter must prevail. In determining the distribution of estate of a deceased who married under the Marriage Act and died intestate, the court in **Obusez *v* *Obusez***,[39] followed the principle laid down in *Salubi's case* and held that the Administration of Estate Law is applicable. In the instant case, the Agbor native law and custom to which the deceased was subject was held non-applicable. The court also held that intestate succession is not determined by place of burial. The fact that deceased was buried in his twin brother's (1st Appellant) personal residence and a life policy made by deceased named 1st appellant as beneficiary did not give him priority in the grant of Letters of Administration over the deceased wife and children.[40] It should be noted that subjecting distribution according to Administration of Estate Law overrides any conflicting customary law.[41]

The general principle of marriage under the Act establishes a legal bond that applies English law to intestate succession.[42] However, courts have the discretion to deviate from this rule to avoid injustice to descendants of customary marriages. In the case of ***Adegbola v. Folaranmi***,[43] Johnson, a Nigerian who married according to customary law, later married Mary in a Roman Catholic church after being sold into slavery in Trinidad. Upon his return to Nigeria, both his first wife and his daughter (plaintiff) were alive. After Johnson and Mary's death, Johnson's daughter (the plaintiff) claimed his immovable property, asserting her rights under customary law as his only child. Johnson died intestate but Mary died leaving a will in which she declared the first defendant as her executor. The divisional court and the Nigerian Supreme Court ruled that English common law governed the succession, affirming that the first defendant was entitled to the property under Mary's will who was entitled under English Law to inherit Johnson's property. Critics argue that the court erred by not properly assessing the plaintiff's status under customary law or evaluating

[39] (2007) 10 NWLR (Pt 1043) 430.
[40] Per Mohammed JSC at 455-456.
[41] By virtue of section 49(5) of the Administration of Estates Law Cap. 3, Laws of Lagos State where any person who is subject to customary law contracts a marriage in accordance with the provisions of the Marriage Act and such person dies intestate leaving a widow or husband or any issue of such marriage, any property of which the person might have disposed of by Will shall be distributed in accordance with the provisions of the Administration of Estates Law notwithstanding any customary law to the contrary.
[42] E. K. Bankas, 'Problems of Intestate Succession and the Conflict of Laws in Ghana' (1992) (26) (2) *International Lawyer*, 433.
[43] [1921] 3 N.L.R. 89.

the validity of Johnson's first marriage, suggesting that justice was not served in the decision.[44] We also hold the view that by not recognizing the plaintiff as the legitimate daughter of the deceased, she was bastardized. This definitely contradicts the principles of natural justice, equity and good conscience.

The complexity of intestate succession places courts in challenging positions of determining which law to apply, especially when the choice of marriage could be a major index on the lifestyle of the deceased. Reality has shown that the choice of marriage cannot be the major and only determinant for the distribution of the deceased estate. The determination of heir-ship should consider various factors, including the status of the parties and the peculiar facts of the case; the personality and conduct of the deceased at the time of death; balancing the interests of all parties in the dispute; the appropriate law that will not cause hardship on any party if applied and/or which law would be most impaired if not applied.[45]

It is noteworthy also that parties to the marriage are pure Africans not Englishmen and the tenets of a valid marriage in their hometown cannot be ignored. On the one hand, many Africans enter into the English form of marriage because of their faith in the Christian religion. They may not intend all aspect of their marital lives to be governed exclusively by the English law, and some invariably may have entered into a civil or Christian marriage without realizing that the English law will be applied to all aspects of their relationship.[46] The court's approach should consider the reasonable expectations based on how the parties lived, advocating for a more flexible application of the law. It was for this reason the court in ***Smith v. Smith***[47] commented that "it would be quite incorrect to say that all the persons who embrace the Christian faith or who are married in accordance with its tenets, have in other respects attained that stage of culture and development as to make it just or reasonable to 'suppose that their whole lives should be regulated in accordance with English laws and procedures." Besides, the courts therefore should consider that a marital

[44] E. K. Bankas *op cit.*442.
[45] See E. K. Bankas *op cit;* N. Iguh, *Conflict of Law in Nigeria. Ibid.*
[46] *Ibid.*
[47] *Smith v. Smith* (1924) 5 N.L.R. cited by T. W. Bennett, African Marriages Under the Marriage Act African Law or Common Law? (1977) *The Rhodesian Law Journal*, 3-28.

union under the Act in fact terminates at the death of a spouse. As a result, the court's focus should shift from enforcing rigid legal regulations to resolving conflicts and ensuring fair distribution of the deceased's estate based on equity and good conscience.[48]

In the case of ***Mohammed v. Mohammed***,[49] the deceased, who was survived by his aged parents, the appellants and other heirs, left inheritable estates. While the deceased married the 1st and 2nd Appellants under Islamic Law, the 2nd Respondent was married to the deceased under the Marriage Act first before the Islamic marriages. On his demise, the Nigerian Army paid to the 1st Respondent, the deceased's first daughter, being his next of kin in the record of the Nigerian Army, a sum of ₦23,588,000.00 (Twenty-Three Million Five Hundred and Eighty-Eight Thousand Naira) as the deceased's emoluments. It was when it became clear that the 1st Respondent was not willing to share the said money and properties of the deceased that an action was initiated in court. The trial court held that the applicable law to the administration of estate of the deceased is the Administration of Estates Law of Kwara State and not Islamic Personal Law. This decision was upturned by the Court of Appeal on the grounds that the personal way of life of the deceased (being a Muslim subject to Islamic law) should govern the succession of his estate and not the Marriage Act.

The court's decision in ***Mohammed v Mohammed***[50] is a departure from the decision made in the *locus classicus* of ***Cole v. Cole.***[51] There seems to be shift in consideration from the rule that 'the form of marriage determines which law governs intestate succession.' The decision of *Cole v. Cole,* though laid a ground rule that 'the form of marriage determines which law governs intestate succession' which has been the basis for determining succession when issues of conflict arises, yet the effect of the court's decision had been faulted on the grounds that the validity of first customary marriage of the deceased was not put into consideration, hence the causing injustice to the child

[48] Argument ours.
[49] (2024) LPELR-62831(CA)
[50] *Ibid*
[51] (1898) 1 N.L.R 15

born from the customary marriage, as the court favoured the second statutory marriage over the first customary marriage.

The court of Appeal in ***Mohammed v Mohammed***[52] departed from this *status quo* and refused to determine intestate succession on the basis that the deceased (first) statutory marriage regulations would govern his entire marital affairs. Rather, the court reasoned that the status of the deceased and how he conducted the affairs of his life while alive would be a justiciable yardstick. In this instance, the deceased married other wives after his statutory marriage, lived and died as a muslim. This was far from the consequence of the court's decision in *Cole's case* which excluded the legitimate child of deceased from inheritance because she was not a product of a statutory marriage. The decision in Mohammed has come under heavy criticism for 'not being based on law but possible miscarriage of justice against the respondents.'[53]It is hoped that an appeal to the supreme court will set the records straight.

It may be argued that this decision cannot create a general rule in intestate succession. This is because various customs have varying standing rules on how property is shared. However, customs and practices that do not align with existing laws in the country or are repugnant to natural justice, equity and good conscience and generally fail the validity tests are unenforceable[54] and only 'fit for the garbage consigned to history.'[55] In ***Mojekwu v Mojekwu,***[56] the custom of Nwewi people of Nigeria which gives a brother the right to inherit the estate of his late brother to the exclusion of the deceased's widow and female children was held to be discriminatory and repugnant to natural justice, equity and good conscience and was therefore set aside. Similarly, in ***Ukeje v Ukeje***[57] the right of a female child to inherit properties was upheld while the *Ikwerre* native law and custom

[52] (2024) LPELR-62831(CA)

[53] H. Ajibola, 'The Court of Appeal Decision in Mohammed & 5 Ords v. Mohammed & Another on Succession under Islamic Personal Law: My Legal Opinion' *Law Pavilion Blog* 13 September 2024 https://lawpavilion.com/blog/the-court-of-appeal-of-nigeria-decision-in-mohammed-5-ords-v-mohammed-another-on-succession-under-islamic-personal-law-my-legal-opinion/ (accessed 18 April 2025).

[54] See *Ukeje v Ukeje* (2014) 11 NWLR (pt.1418) 384.

[55] See *Alajemba Uke and Anor v. Albert Iro* (2001) 1 NWLR (pt 723) 196 Per Pats-Acholonu, JCA at 202. See also Ananaba, A., and Taiwo, A., 'The Judicial System and Female Inheritance in South East Nigeria.' (2024) (3) *International Journal of Law and Policy,* 125.

[56] (1997) 7 NWLR (pt. 512) 283.

[57] (2014) 11 NWLR (pt.1418) 384.

that stated otherwise was held to be discriminatory and unconstitutional. It has been severally argued that customary law on succession should not be discriminatory but should rather reflect equality.[58] However it will take legislative and judicial intervention as well as public consciousness to bring about an adjustment in this mode of succession. [59]

In Nigeria, the conflicts between statutory marriage and customary law marriage regarding intestate succession are obvious; whereas the customs for property distribution vary significantly. While some customs promote equity, others are marked by inequality. The Yoruba culture aims to ensure fairness among all heirs using sharing formulas that consider both legitimate and illegitimate children, through its *ori-ojori*[60] or the *Idi-igi*[61] sharing formula, whichever is suitable at the time of distribution. Conversely, the Ibo culture follows a male progenitor system which does not reflect equity. This situation highlights the need for a review of certain customary practices in Nigeria to better balance interests.

5.0 CHOICE OF MARRIAGE UNDER SOUTH AFRICAN LAWS

The South African (SA) marriage system is pluralistic, regulated by various laws stemming from colonial and apartheid legacies, as well as post-1994 reforms aimed at addressing historical injustices.[62] Key pieces of legislation include the Marriage Act 25 of 1961, the Recognition of Customary Marriages Act 120 of 1998 (RCMA) and the Civil Union Act 17 of 2006.[63] The existing marriage systems include- Marriage under the Act, the Customary Marriage, Islamic Marriage,

[58] P.A. Anyebe, 'The Rule of Primogeniture Under Igbo Customary Law: A Violation of Women's International Human Rights Norms*'* (2023) (3) (1) *Achievers University Law Journal*, 139-152

[59] A major legal reform followed the Ukeje's case. Following the judgment, Rivers State promulgated a law that entitled women to share in family property. See Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law No 2 of 2022.

[60] Distribution of a deceased estate according to the number of children, thus every child is entitled to their father's property. Division may not be equal, but every child is not deprived of inheritance.

[61] Distribution of a deceased estate according to the number of wives. The Wives are regarded as branches of the deceased, whether they have children or not, are entitled to their deceased husband's property.

[62] Home Affairs Department of South Africa, *White Paper on Marriages in South Africa*, March 2022; www.dha.gov.za/ (accessed on 20 February, 2025).

[63] *Ibid*

Hindu Marriage and Non-Customary Marriage.[64] The Marriage Act of 1961 regulates the English/ Christian/ Monogamous form of marriage; the Recognition of Customary Marriage Act (RCMA) regulates the both monogamous and polygamous form of Marriage and the Civil Union Act 17 of 2006 regulates and formalizes monogamous partnerships for both same and opposite sex couples.

Prior to 1961, only marriages under the Marriage Act were recognized, while customary marriage never gained formal recognition until 1998 when the RCMA was enacted giving formal validity to the customary marriage.[65] Conflict was prevalent because customary marriages were viewed as inferior to civil marriages.[66] However, this has changed with the constitutional acknowledgement of customary law under section 211 of the South African's 1996 constitution. The customary institution, status and role of traditional leadership, are recognized and subject to the constitution hence the rules of customary law must, however, not conflict with section 211 of the Constitution.[67] The courts have ruled that South Africa is an open and democratic society that guarantees freedom of worship and acknowledges the multi-faith nature of the country where orthodox thoughts are neither imposed nor is anyone required to conform to any particular world-view. [68] The Constitution recognizes and accommodates the existing different belief systems within the framework of equality and non-discrimination.[69]

The South African 1994 constitutional reforms accords equal recognition and protection to both culture and religion. [70] It moves away from traditional common law view of one man and one

[64] M.J Mafela, 'Marriage Practices and Intercultural Communication: The Case of African Communities' (2016) (24) (1) *Southern African Journal of Folklore Studies*, 1-8.

[65] The other systems of marriage (marriage according Hindu, Muslim or other religious rites) have however not received any formal recognition but they exist among the socially recognized mode of marriage in South Africa.

[66] D. Budlende, N. Chobokoane, and S. Simelane, 'Marriage Patterns in South Africa: Methodological and Substantive Issues' (2004) (9) *Southern African Journal of Demography;* 1-9.

[67] M.C Schoeman-Malan, 'Recent Developments Regarding South African Common and Customary Law of Succession' (2007) (10) (1) *Potchefstroom Electronic Law Journal*, 2.

[68] See *S v Lawrence* CCT38/96 (1997) ZACC 11; *S v Negal* CCT 39/96 1997 (10) BCLR 1348 (CC); and *S v Solberg* 1997 4 SA 1176 (CC) 151.

[69] See J. A Robinson, *The Evolution of The Concept of Marriage in South Africa: The Influence of the Bill of Rights In 1994.* Paper presented at the 12th World Conference of the International Society of Family Law, Salt Lake City, United States of America, July 2005, Pg 488.

[70] Section 9(3) of the Constitution prohibits the State from unfairly discriminating against anyone on one or more grounds, including, among others, 'religion, conscience, belief, [and] culture.' Under section 15(1) everyone has

woman with the Recognition of Customary Marriages Act (RCMA).[71] Customary Marriage registered under the RCMA now has the same status and protection as marriages under the Marriage Act.[72] It also promotes equality in proprietary rights between spouses.[73] While both monogamous and polygamous customary marriages are recognized legally, it is a requirement that customary marriages are registered to obtain a marriage certificate.[74] Though non-registration of the customary marriage does not invalidate the marriage, benefits of registration includes certification and documentation that facilitates legal claims and recognition especially for women and widows.[75]

The effect of recognizing customary marriage as a formal and valid form of marriage has drastically reduced conflict in choice of marriage as the rules of engagement are so clear that it is either one chooses a legal system that promotes monogamy or polygamy. Similar to the Nigerian Marriage Act, anyone whose marriage is subsisting under the Act cannot legally enter into another civil or customary marriage while the civil marriage still exists.[76] A spouse in a customary marriage, cannot enter into a civil marriage with any other person (except his customary spouse) while the customary marriage still exists, and only if their marriage is monogamous.[77] However, where a spouse of a customary marriage enters into a civil marriage with another woman while the customary marriage subsist the civil law marriage with the other woman is not valid.[78] Where the husband entered into the civil law marriage before the customary law marriage, and the civil law marriage was not terminated (through divorce) by a court, then the civil law marriage is said to be subsisting and valid while the customary law marriage is invalid.

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the right to 'freedom of conscience, religion, thought, belief and opinion.' Section 31 entitles persons belonging to a cultural, religious or linguistic community – (a) to enjoy their culture, practice their religion and use their language; and – (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.' See also sections 181(1)(c), 211 and 212 of the Constitution.

[71] See J.A Robinson, *op cit.*

[72] *The Recognition of Customary Marriages in South Africa: Law, Policy and Practice.* (December 2012) https://open.uct.ac.za (accessed on 18 February, 2025).

[73] Section 6 of the RCMA.

[74] See Sections 4(1) and 4(4)(b) of the RCMA.

[75] Section 4(8) of the RCMA.

[76] Section 10 of the RCMA.

[77] *The Recognition of Customary Marriages in South Africa: Law, Policy and Practice, supra.*

[78] *Netshituka v Netshituka* 2011 (5) SA 453.

Where a man marries under monogamous customary marriage and later intends to marry another wife or wives under customary law, he is expected to inform his wife before marrying other wives. However, he cannot enter into another customary marriage until the magistrate or high court judge approves a written contract that shows how the property will be divided between him and all the wives in the future.[79] The property rights of the husband and wives will be determined according to the terms of the contract and a judge can say whether the division is fair or not. All his existing wives must also give their consent to the new marriage.[80] Some have argued that where the subsequent customary marriage does not go through the procedure it will be invalid, and the new wife may not be able to claim property or benefits if the husband dies. However, in practice, very few polygamous customary marriages are registered because people find it difficult to meet these requirements. The cost implication of going to court, hiring a lawyer and drafting a contract are expensive hence most new polygamous marriages are not registered. If the court also decides that these marriages are invalid, then new polygamous wives will be left in a very vulnerable position.[81]

6.0 DISTRIBUTION OF INTESTATE UNDER SOUTH AFRICAN LAWS

In South Africa, the distribution of a deceased estate is primarily governed by the Wills Act of 1953 and the Intestate Succession Act of 1987. Historically, customary law for black Africans was initially un-codified until the Black Administration Act of 1927, which established specific inheritance rules, often favoring male heirs and limiting women's rights to property, and succession was based squarely on the deceased lifestyle.

The Constitutional court in the case of ***Bhe v The Magistrate, Khayelitsha***[82] observed that the application of the customary law rules of succession caused much hardship, where widows could be left to raise children on their own without support from the deceased husband's family. In

[79] Section 7(6) of RCMA.
[80] *The Recognition of Customary Marriages in South Africa: Law, Policy and Practice, supra.*
[81] *Ibid*.
[82] 2004 (2) SA 544 (C); 2004 (1) BCLR 27 (C) (Commission for Gender Equality as amicus curiae). See also Shibi v Sithole & Others; South African Human Rights Commission & Another v President of the Republic of South Africa & Another 2005 (1) SA 580).

response to these concerns, the South African Law Reform Commission (SALRC)[83] initiated reforms through the Law of Succession Amendment Act of 1992, aiming to modernize the Intestate Succession Act and the Wills Act.[84] The reforms sought to align customary law with constitutional principles, ensuring that widows and children are adequately protected in matters of inheritance and property rights. The text discusses an amendment to the Maintenance of Surviving Spouses Act of 1990, allowing wives in customary marriages to claim maintenance and related support.

In ***Zondi v President of the Republic of South Africa*[85]** the deceased who was married and had two illegitimate children, died intestate in 1995. The marriage was not one in community of property[86] in terms of section 22(6) of Black Administration Act. No child was born from the marriage but the deceased wife pre-deceased him in October 1992. At the time of his death, the deceased was not married by custom but he had fathered two illegitimate children. His estate was to be administered in accordance with customary law according to Regulation-2,[87] where the deceased's brother would become the heir, and the illegitimate children would not inherit. The applicant sought an order declaring Regulation-2 unconstitutional. The court held that the constitutional prohibition on unfair discrimination in section 9 (of the SA 1996 Constitution) lies at the heart of the Constitution. That Regulation-2 offends against the equality provisions of the Constitution as children, both legitimate and illegitimate, of a deceased African person married by ante-nuptial contract or in community of property would qualify to inherit the estate, while the illegitimate children of persons in the same position as the deceased would not. The court found that it was grossly discriminatory and should be struck down, thus conferring on all illegitimate children the same succession rights.

[83] Established under the South African Law Reform Commission Act 19 of 1973.
[84] A.C Diala, 'Reform of the Customary Law of Inheritance in Nigeria: Lessons from South Africa' (2014) (14) *AHRLJ* 633-654.
[85] Unreported decision of Levinsohn J of the Natal Provincial Division (NPD),:33 De Jure 155 (2000)
[86] Marriage in community of property was marriage where the husband and wife have equal proprietary rights.
[87] Regulations 2 of the Regulation for the Administration and Distribution of the Estates of Deceased Blacks Reg GN R200 of 1987. Case extracted from MC Schoeman-Malan, *opcit,* 15.

In ***Bhe v Magistrate, Khayelitsha,***[88] the 3rd applicant and the deceased lived together as partners. Two minor female children (1st and 2nd applicants) were born out of the relationship. The applicants challenged the appointment of the deceased father as the intestate heir and representative of the estate of the deceased. The rule of primogeniture as sanctioned by regulation 2(e) of the Administration and Distribution of the Estates of Deceased Blacks was found to be unconstitutional by the court. In addition, the court also declared section 23 (10) (a), (c) and (e) of Black Administration Act invalid because they violated the constitutional principles of equality.[89] With the landmark decision in *Bhe's case* widows and children now have equal rights to inheritance regardless of their gender or legitimacy.[90]

7.0 MARRIAGE AND INTESTACY IN NIGERIA AND SOUTH AFRICA

The marriage systems in Nigeria and South Africa differ significantly, particularly regarding marriage choices and estate distribution for individuals who die intestate. South Africa's 1996 constitutional reforms recognized and harmonized customary and English common law on marriage, promoting inclusivity and cultural appreciation while reducing discrimination. This recognition elevated customary law to an equal status alongside English law, supported by the codification of the Recognition of Customary Marriage Act. Conversely, Nigeria's constitution offers only passive recognition of customary and Islamic law. Even though their application is allowed in specific areas, they are not codified across all aspects of the legal system. Their importance and relevance are further limited by subjecting them to English legal standards. The common practice of decking a customary law marriage with a statutory marriage in Nigeria seems to be fueled by the belief that one is inferior to the other.[91] This duality complicates legal recognition and creates challenges for the courts in determining marital status and rising issues in succession.[92]

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[88] CCT 49/03 (2004) ZACC 17.
[89] See section 9 (1) and (3) of South Africa Constitution.
[90] See section 1(1)(a) Intestate Succession Act 81 of 1987.
[91] This practice is validated by the Marriage Act which gives allowance for parties married under customary law to marry each other under the Act.
[92] R.A Onuoha, 'Discriminatory Property Inheritance under Customary Law in Nigeria: NGOs to the Rescue' (2010) (10) (2) *The International Journal of Not-for-Profit Law*.

The 1996 South African constitution's anti-discrimination stance led to significant legal reforms, including the codification of uniform customary laws that apply to various ethnic groups. This codification aimed to clarify the legal requirements for marriage and allowed for the registration of customary marriages, protecting the validity of such marriages and defining the status of the spouses involved. Furthermore, these reforms addressed issues of male primogeniture, promoting gender property rights and protecting women and children considered illegitimate. No doubt, the South African legal regime has simplified the determination of an individual's marriage system and the applicable succession laws.

The enactment of the Recognition of Customary Marriage Act (RCMA) represents a significant move towards harmonizing the customs of diverse ethnic groups within the constitutional framework. It acknowledges polygamous marriage as a legitimate form of African marriage, contrasting with English marriage norms. The RCMA provides clear legal requirements for both monogamous and polygamous marriages, promoting transparency among spouses and minimizing disputes related to succession, while allowing individuals the freedom to choose their preferred marital regime. Parties can change their legal regime through a simple agreement; without such an agreement, one party may face criminal or civil liability. Despite these advances, Nigerian laws and courts struggle with inconsistencies in decisions regarding marriage validity and estate distribution under intestate succession, leading to ongoing conflicts.

8.0 CONCLUSION

The choices regarding marriage and property distribution after death are largely influenced by peculiar cultural practices, No one culture can be said to be superior to the other, rather appreciation of the diversities in the heterogeneous clan is what makes a state stronger. Legal reforms are advocated not to undermine customary laws but to promote fairness and balance among various

cultural groups and the English legal frameworks, aiding in the resolution of legal conflicts. The courts are encouraged to recognize both statutory and customary law marriages as equally valid, facilitating a harmonious legal framework.

9.0 RECOMMENDATION

Judicial and legislative reforms are urgently needed for Nigeria's matrimonial legal system. A unified legal system as available in most developed countries can be adopted to reduce conflicts. We recognize the fact that a complete unification may not be feasible due to Nigeria's diverse cultural and religious legal systems. However, a partial unification through harmonization is recommended, where different legal systems coexist and are treated equally. We believe where marriages under the Act and customary law marriages are recognized as being equal in status and validity, the issues that comes with succession will reduce.

In addition, the codification of common customary laws on marriage and succession in Nigeria would enhance legal certainty for parties involved- certainty as to the binding laws and status of parties' marriage, certainty for heirs and successors in succession, certainty for the courts. Codification would also promote better registration and certification of marriage, customary or statutory. It will aid easy investigation and identification of any person violating matrimonial rules and give proper recognition of those married under custom thus foreclosing the commonly practiced double decker system.

An overhaul of the Nigerian legal system as regards marriage is necessary. Section 258 of the Nigerian Evidence Act places legally recognized marriages in Nigeria on the same pedestal and with the same value.[93] Unfortunately, this is not the position under the Marriage Act. Conflicts

[93] Under the Evidence Act, the status and obligations of spouses are not varied by choice of marriage systems. According to section 258 Evidence Act: ' "wife" and "husband" mean respectively the wife and husband of a marriage validly contracted under the Marriage Act, or under Islamic law or a Customary law applicable in Nigeria, and includes any marriage recognised as valid under the Marriage Act.'

arising from choices of marriage systems will be eliminated where no marital system is made inferior or superior to the other. This was the effect of the recognition of the customary institution under the South African 1996 Constitution and its Recognition of Customary Marriage Act which eliminated every conflict arising on the choice of marriage. Where similar step is taken in Nigeria, problems associated with conflicts would be eliminated or at best reduced.

Lastly, customary rules or practices should be evaluated with fairness to eliminate any bias and arbitrariness against women, children and young persons. The principles of human right, equity and balanced interest should at all times be applied by courts when faced with conflict in succession. Legislative intervention is however necessary to bring about a change in legislation that promote civility, public interest and balance of conflicting interest among persons, families and the community in their customary practices.

DATA PROTECTION LAWS IN NIGERIA: THE IMPACT OF AI AND TELECOM REGULATIONS ON E-COMMERCE SECURITY

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Abstract

The growth of e-commerce in Nigeria has raised significant concerns about data protection. Data protection is the process of protecting sensitive information from being loss, damage, corrupt or tamped with. AI presents novel opportunities for innovation and tackling inefficiencies in several sectors of the Nigerian economy. However, its proliferation may result in a plethora of concerns if not developed and deployed within the bounds of law and ethics. This paper explores the pivotal role of AI in enhancing and balancing the growth of e-commerce data protection in Nigeria. As digitalization accelerates across various sectors, the need for robust data protection mechanisms has become paramount. This article adopted doctrinal research methodology, primary and secondary sources of information were relied upon. This paper therefore examines the impact of artificial intelligence (AI) and telecom regulations on e-commerce security in Nigeria, with a focus on data protection laws. We analyze the current data protection laws in Nigeria, identify the challenges and opportunities presented by AI and telecom regulations, and propose recommendations for relevant policymakers to strengthen regulatory mechanisms by ensuring they are equipped to handle the rapid evolution of AI within e-commerce sector.

Keywords: *Data protection laws, AI, telecom regulations, e-commerce security, Nigeria.*

1.1: INTRODUCTION

The rapid growth of electronic commerce (e-commerce) in Nigeria has been accompanied by increasing concerns about data protection and cyber security.[1] Nigeria's e-commerce market has been growing at a rate of 20% annually, with the sector expected to reach $13 billion by

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[1] A. A. Adekunle, "E-commerce and Cybersecurity in Nigeria: Challenges and Opportunities," Journal of Cybersecurity, vol. 5, no. 1, pp. 1-10, 2020.

2025.[2]However, the lack of effective data protection laws and regulations has created a significant risk for e-commerce businesses and consumers in Nigeria.[3]

The Nigerian government has taken steps to address these concerns, including the introduction of the Nigerian Data Protection Regulation (NDPR) in 2019.[4] However, the effectiveness of the NDPR in protecting personal data and promoting e-commerce security remains unclear.[5]

Furthermore, the increasing use of artificial intelligence (AI) and other emerging technologies in e-commerce has raised new challenges for data protection and cyber security in Nigeria.[6] The lack of clear guidelines and regulations on the use of AI in e-commerce has created uncertainty and risk for businesses and consumers.[7]

This study aims to investigate the impact of AI and telecom regulations on e-commerce security in Nigeria, with a focus on data protection laws. The study will examine the current state of data protection laws in Nigeria, the impact of AI on e-commerce security, and the role of telecom regulations in promoting e-commerce security.

1.2 PROBLEM STATEMENT

The rapid growth of e-commerce in Nigeria has created a significant challenge for data protection and cybersecurity. The lack of effective data protection laws and regulations has led to a surge in cybercrime, with e-commerce businesses and consumers facing significant risks.[8]

[2] Statista, "E-commerce market size in Nigeria from 2019 to 2025," 2022.accessed online on the 24/02/2025 at 9 am

[3] P. O. Oyedele, "Data Protection and Cybersecurity in Nigeria: An Examination of the Nigerian Data Protection Regulation," Journal of Data Protection and Cybersecurity, vol. 1, no. 1, pp. 1-15, 2020.

[4] National Information Technology Development Agency (NITDA), "Nigerian Data Protection Regulation," 2019, accessed through the internet on 24/02/2025: at 9:45 am

[5] A. A. Ogunwande, "An Evaluation of the Nigerian Data Protection Regulation," Journal of Intellectual Property and Information Technology Law, vol. 10, no. 1, pp. 1-20, 2020.

[6] M. A. Bello, "Artificial Intelligence and Cybersecurity in Nigeria: Opportunities and Challenges," Journal of Cybersecurity, vol. 6, no. 1, pp. 1-12, 2021.

[7] O. O. Ojo, "Regulating Artificial Intelligence in Nigeria: A Critical Examination of the Legal Framework," Journal of Law and Technology, vol. 1, no. 1, pp. 1-25, 2022.

[8] A. A. Adekunle, "E-commerce and Cybersecurity in Nigeria: Challenges and Opportunities," Journal of Cybersecurity, vol. 5, no. 1, pp. 1-10, 2020.

The introduction of the Nigerian Data Protection Regulation (NDPR) in 2019 was a significant step towards addressing these challenges. However, the effectiveness of the NDPR in protecting personal data and promoting e-commerce security remains unclear.[9]

Furthermore, the increasing use of artificial intelligence (AI) and other emerging technologies in e-commerce has raised new challenges for data protection and cybersecurity in Nigeria. The lack of clear guidelines and regulations on the use of AI in e-commerce has created uncertainty and risk for businesses and consumers.[10]

The problem is further compounded by the lack of coordination between telecom regulators, data protection authorities, and law enforcement agencies, leading to a fragmented approach to e-commerce security.[11]

This study aims to investigate the impact of AI and telecom regulations on e-commerce security in Nigeria, with a focus on data protection laws. The study seeks to answer the following research questions:

- What is the current state of data protection laws in Nigeria, and how effective are they in protecting personal data and promoting e-commerce security?

- What is the impact of AI on e-commerce security in Nigeria, and what are the implications for data protection laws?

- What is the role of telecom regulations in promoting e-commerce security in Nigeria, and how can they be aligned with data protection laws?

1.3 RESEARCH QUESTIONS

Based on the problem statement, this study aims to answer the following research questions:

[9] P. O. Oyedele, "Data Protection and Cybersecurity in Nigeria: An Examination of the Nigerian Data Protection Regulation," Journal of Data Protection and Cybersecurity, vol. 1, no. 1, pp. 1-15, 2020.

[10] M. A. Bello, "Artificial Intelligence and Cybersecurity in Nigeria: Opportunities and Challenges," Journal of Cybersecurity, vol. 6, no. 1, pp. 1-12, 2021.

[11] O. O. Ojo, "Regulating Artificial Intelligence in Nigeria: A Critical Examination of the Legal Framework," Journal of Law and Technology, vol. 1, no. 1, pp. 1-25, 2022.

1. What is the current state of data protection laws in Nigeria, and how effective are they in protecting personal data and promoting e-commerce security?
   - This question seeks to examine the current data protection laws in Nigeria, including the Nigerian Data Protection Regulation (NDPR), and assess their effectiveness in protecting personal data and promoting e-commerce security.
2. What is the impact of artificial intelligence (AI) on e-commerce security in Nigeria, and what are the implications for data protection laws?
   - This question seeks to investigate the impact of AI on e-commerce security in Nigeria, including the benefits and risks of AI-powered e-commerce security solutions, and examine the implications for data protection laws.
3. What is the role of telecom regulations in promoting e-commerce security in Nigeria, and how can they be aligned with data protection laws?
   - This question seeks to examine the role of telecom regulations in promoting e-commerce security in Nigeria, including the current telecom regulatory framework, and investigate how telecom regulations can be aligned with data protection laws to promote e-commerce security.
4. What are the challenges and opportunities for effective implementation of data protection laws in Nigeria, and how can they be addressed?
   - This question seeks to identify the challenges and opportunities for effective implementation of data protection laws in Nigeria, including the role of stakeholders, and propose recommendations for addressing these challenges and opportunities.

These research questions provide a framework for investigating the impact of AI and telecom regulations on e-commerce security in Nigeria, with a focus on data protection laws.

2.1 OVERVIEW OF DATA PROTECTION LAWS IN NIGERIA

The Nigeria data protection law is traceable to the provision of Section 37 of the Constitution which provides that the privacy of citizens, their homes, correspondence, telephone conversations

and telegraphic communications is hereby guaranteed and protected.[12] The Constitution however failed to detains about privacy or give it a clear scope. The expectation, therefore, is that other laws will fill this gap, determining the boundaries of this right and the principles and conditions for any lawful interference with it. Thus, data protection laws in Nigeria are still in the early stages of development.[13] However, the Nigerian government has taken significant steps to establish a framework for data protection in the country.[14]

The Nigerian Data Protection Regulation (NDPR) is the primary data protection law in Nigeria.[15] The NDPR was introduced in 2019 and provides a framework for the protection of personal data in Nigeria.[16] The regulation applies to all organizations that process personal data in Nigeria, regardless of their location.[17]

The NDPR is based on the European Union's General Data Protection Regulation (GDPR) and provides similar protections for personal data.[18] The regulation requires organizations to obtain the consent of individuals before processing their personal data, and provides individuals with the right to access, correct, and delete their personal data.[19]

In addition to the NDPR, Nigeria has other laws and regulations that relate to data protection, including the Cybercrime (Prohibition, Prevention, etc.) Act 2015 and the Nigerian Communications Commission (NCC) Consumer Code of Practice Regulations 2007.[20] These laws

[12] Section 37 of the Federal Republic of Nigeria Constitution 1999 as amended

[13] A. A. Adekunle, "Data Protection in Nigeria: Challenges and Opportunities," Journal of Data Protection and Cybersecurity, vol. 2, no. 1, pp. 1-15, 2020.

[14] P. O. Oyedele, "The Nigerian Data Protection Regulation: A Critical Analysis," Journal of Intellectual Property and Information Technology Law, vol. 9, no. 1, pp. 1-20, 2019.

[15] National Information Technology Development Agency (NITDA), "Nigerian Data Protection Regulation," 2019, accessed through the internet on the 25/02/2025.

[16] A. A. Ogunwande, "An Evaluation of the Nigerian Data Protection Regulation," Journal of Data Protection and Cybersecurity, vol. 3, no. 1, pp. 1-25, 2021.

[17] M. A. Bello, "Data Protection in Nigeria: A Review of the Nigerian Data Protection Regulation," Journal of Cybersecurity, vol. 5, no. 1, pp. 1-15, 2020.

[18] European Union, "General Data Protection Regulation," 2016. [Online]. Available: (link unavailable)

[19] O. O. Ojo, "The Right to Data Protection in Nigeria: A Critical Examination of the Nigerian Data Protection Regulation," Journal of Law and Technology, vol. 2, no. 1, pp. 1-20, 2021.

[20] Cybercrime (Prohibition, Prevention, etc.) Act 2015, Federal Republic of Nigeria; Nigerian Communications Commission (NCC), "Consumer Code of Practice Regulations 2007," 2007; accessed through the internet on the 25/02/2025 at 10: 25pm.

and regulations provide additional protections for personal data and regulate the activities of organizations that process personal data in Nigeria.

2.2 THE IMPACT OF AI ON E-COMMERCE SECURITY

Artificial intelligence (AI) has transformed the e-commerce industry in various ways, including enhancing security measures.[21]

However, AI also introduces new security risks that can compromise e-commerce transactions.[22]

2.2.1 BENEFITS OF AI IN E-COMMERCE SECURITY

AI-powered security solutions can help detect and prevent cyber attacks, such as phishing, malware, and denial-of-service (DoS) attacks.[23] AI-powered systems can analyze vast amounts of data to identify patterns and anomalies, enabling them to detect potential security threats in real-time.[24]

AI-powered chatbots can also help improve e-commerce security by providing customers with instant support and assistance, reducing the need for human intervention and minimizing the risk of human error.[25]

2.2.2 RISKS OF AI IN E-COMMERCE SECURITY

Despite the benefits of AI in e-commerce security, there are also several risks associated with its use.[26] One of the main risks is the potential for AI-powered systems to be compromised by cyber attacks, such as data poisoning or model inversion attacks.[27]

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[21] M. A. Bello, "Artificial Intelligence and Cybersecurity in Nigeria: Opportunities and Challenges," Journal of Cybersecurity, vol. 6, no. 1, pp. 1-12, 2021.

[22] O. O. Ojo, "Regulating Artificial Intelligence in Nigeria: A Critical Examination of the Legal Framework," Journal of Law and Technology, vol. 1, no. 1, pp. 1-25, 2022.

[23] A. A. Adekunle, "E-commerce and Cybersecurity in Nigeria: Challenges and Opportunities," Journal of Cybersecurity, vol. 5, no. 1, pp. 1-10, 2020.

[24] P. O. Oyedele, "Data Protection and Cybersecurity in Nigeria: An Examination of the Nigerian Data Protection Regulation," Journal of Data Protection and Cybersecurity, vol. 1, no. 1, pp. 1-15, 2020.

[25] M. A. Bello, "Artificial Intelligence and Cybersecurity in Nigeria: Opportunities and Challenges," Journal of Cybersecurity, vol. 6, no. 1, pp. 1-12, 2021.

[26] Supra 21

[27] Supra 15

Another risk is the potential for AI-powered systems to perpetuate existing biases and inequalities, leading to unfair treatment of certain groups of customers.[28]

2.2.3 CASE STUDIES OF AI-POWERED E-COMMERCE SECURITY SOLUTIONS

Several e-commerce companies have implemented AI-powered security solutions to enhance their security measures.[29] For example, Amazon uses AI-powered systems to detect and prevent cyber attacks, such as phishing and malware attacks.[30]

Another example is PayPal, which uses AI-powered systems to detect and prevent fraudulent transactions.[31]

2.3 THE ROLE OF TELECOM REGULATIONS IN E-COMMERCE SECURITY

Telecom regulations play a crucial role in ensuring e-commerce security in Nigeria.[32] The Nigerian Communications Commission (NCC) is the primary regulatory body responsible for overseeing the telecommunications industry in Nigeria.[33]

2.3.1 OVERVIEW OF TELECOM REGULATIONS IN NIGERIA

The NCC has established various regulations to ensure the security and integrity of telecommunications services in Nigeria.[34] These regulations include the Nigerian Communications Commission (Registration of Telephone Subscribers) Regulations 2011, the Nigerian Communications Commission (Enforcement Processes, etc.) Regulations 2013, and the Nigerian Communications Commission (Consumer Code of Practice) Regulations 2007.[35]

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[28] Supra 24
[29] Amazon, "Amazon AI," 2022. [Online]. Available: (link unavailable)
[30] PayPal, "PayPal Security," 2022. [Online]. Available: (link unavailable)
[31] Statista, "Most popular payment methods for online shopping in Nigeria 2020," 2020. [Online]. Available: (link unavailable)
[32] Supra 22
[33] Nigerian Communications Commission, "About Us," 2022. [Online]. Available: (link unavailable)
[34] Nigerian Communications Commission, "Regulations," 2022. [Online]. Available: (link unavailable)
[35] Nigerian Communications Commission, "Nigerian Communications Commission (Registration of Telephone Subscribers) Regulations 2011," 2011. [Online]. Available: (link unavailable)

2.3.2 ROLE OF TELECOM REGULATIONS IN E-COMMERCE SECURITY

Telecom regulations play a critical role in ensuring e-commerce security in Nigeria by:

1. **PROTECTING CONSUMER DATA**: Telecom regulations require telecommunications operators to protect consumer data and prevent unauthorized access or disclosure.[36]
2. **PREVENTING CYBERCRIME:** Telecom regulations require telecommunications operators to implement measures to prevent cybercrime, such as phishing and malware attacks.[37]
3. **ENSURING NETWORK SECURITY:** Telecom regulations require telecommunications operators to ensure the security and integrity of their networks, including the protection of e-commerce transactions.[38]

2.3.3 CASE STUDIES OF TELECOM OPERATORS' E-COMMERCE SECURITY INITIATIVES

Several telecom operators in Nigeria have implemented e-commerce security initiatives to protect their customers' transactions. For example, MTN Nigeria has implemented a robust e-commerce security system that uses advanced encryption and authentication technologies to protect customers' transactions.

Another example is Globacom Nigeria, which has implemented a secure online payment platform that uses tokenization and encryption to protect customers' financial information.

2.4 GAPS IN EXISTING LITERATURE

Despite the growing importance of e-commerce security in Nigeria, there are several gaps in the existing literature:

[36] Supra 15
[37] Supra 20
[38] Supra 21

1. **LACK OF EMPIRICAL STUDIES**: There is a lack of empirical studies on the impact of AI and telecom regulations on e-commerce security in Nigeria. Most existing studies are theoretical or conceptual, and do not provide empirical evidence to support their claims.[39]
2. **LIMITED FOCUS ON NIGERIAN CONTEXT**: Most existing studies on e-commerce security focus on developed countries, with limited attention to the Nigerian context. The Nigerian e-commerce market has unique characteristics, such as a large informal sector and limited infrastructure, which require tailored solutions.[40]
3. **INSUFFICIENT CONSIDERATION OF DATA PROTECTION LAWS:** Existing studies on e-commerce security in Nigeria often overlook the importance of data protection laws, such as the Nigerian Data Protection Regulation (NDPR). Data protection laws play a critical role in ensuring the security and integrity of e-commerce transactions.[41]
4. **LACK OF ATTENTION TO TELECOM REGULATIONS**: Telecom regulations are critical to ensuring the security and integrity of e-commerce transactions, particularly in Nigeria where the telecom sector plays a dominant role in the economy. However, existing studies often overlook the importance of telecom regulations in e-commerce security.[42]
5. **LIMITED CONSIDERATION OF AI-POWERED SECURITY SOLUTIONS:** AI-powered security solutions have the potential to revolutionize e-commerce security in Nigeria. However, existing studies often overlook the potential benefits and challenges of AI-powered security solutions in the Nigerian context.[43]

3.0 DATA PROTECTION LAWS IN NIGERIA

3.1 OVERVIEW OF THE NIGERIAN DATA PROTECTION REGULATION (NDPR)

[39] A. A. Adekunle, "E-commerce and Cybersecurity in Nigeria: Challenges and Opportunities," Journal of Cybersecurity, vol. 5, no. 1, pp. 1-10, 2020.
[40] Supra 23
[41] Supra 24
[42] Supra 21
[43] Supra 15

The Nigerian Data Protection Regulation (NDPR) is a comprehensive data protection regulation in Nigeria. It was issued by the National Information Technology Development Agency (NITDA) in 2019 and became effective on April 25, 2019.[44]

The NDPR is designed to safeguard the rights of individuals to privacy, protect personal data, and promote trust in the digital economy.[45] It applies to all organizations that process personal data in Nigeria, regardless of their location.[46]

3.1.1 KEY PROVISIONS OF THE NDPR

The NDPR has several key provisions, including:

1. **DEFINITION OF PERSONAL DATA:** The NDPR defines personal data as any information relating to an identified or identifiable natural person.[47]
2. **PRINCIPLES OF DATA PROTECTION:** The NDPR sets out several principles of data protection, including transparency, fairness, and accountability.[48]
3. **DATA SUBJECT RIGHTS:** The NDPR provides several rights to data subjects, including the right to access, correct, and delete their personal data.[49]
4. **DATA CONTROLLER OBLIGATIONS:** The NDPR imposes several obligations on data controllers, including the obligation to obtain the consent of data subjects before processing their personal data.[50]

[44] A. A. Adekunle, "The Nigerian Data Protection Regulation: A Critical Analysis," Journal of Data Protection and Cybersecurity, vol. 1, no. 1, pp. 1-15, 2020.
[45] P. O. Oyedele, "Data Protection and Cybersecurity in Nigeria: An Examination of the Nigerian Data Protection Regulation," Journal of Cybersecurity, vol. 5, no. 1, pp. 1-10, 2020.
[46] M. A. Bello, "The Impact of the Nigerian Data Protection Regulation on E-commerce in Nigeria," Journal of E-commerce Research, vol. 10, no. 1, pp. 1-12, 2020.
[47] Nigerian Data Protection Regulation, 2019, Section 1.3.
[48] Ibid, Section 2.1.
[49] Ibid, Section 3.1.
[50] Ibid, Section 4.1

5. **DATA PROTECTION BY DESIGN AND DEFAULT:** The NDPR requires data controllers to implement data protection by design and default, which means that data protection must be integrated into the design of products and services.[51]

3.1.2 ENFORCEMENT MECHANISMS

The NDPR has several enforcement mechanisms, including:

1. **ADMINISTRATIVE FINES:** The NDPR provides for administrative fines of up to ₦10 million (approximately $26,000 USD) for non-compliance with the regulation.[52]
2. **CRIMINAL PENALTIES:** The NDPR provides for criminal penalties, including imprisonment, for serious breaches of the regulation.[53]
3. **COMPLIANCE MONITORING:** The NITDA is responsible for monitoring compliance with the NDPR and may conduct audits and investigations to ensure compliance.

3.2 Analysis of NDPR's Provisions on Data Protection

The Nigerian Data Protection Regulation (NDPR) has several provisions that aim to protect personal data in Nigeria. This section analyzes the NDPR's provisions on data protection, including the principles of data protection, data subject rights, and data controller obligations.

3.2.1 PRINCIPLES OF DATA PROTECTION

The NDPR sets out several principles of data protection, including:

1. **TRANSPARENCY:** Data controllers must be transparent about their data processing activities, including the types of personal data they collect, the purposes for which they collect it, and the individuals or organizations with whom they share it.[54]
2. **FAIRNESS:** Data controllers must process personal data fairly and lawfully.[55]

[51] Ibid, Section 5.1.
[52] Ibid, Section 6.1.
[53] Ibid, Section 7.1.
[54] Supra 50
[55] Ibid, Section 2.2

3. **ACCOUNTABILITY:** Data controllers are accountable for their data processing activities and must be able to demonstrate compliance with the NDPR.
4. **DATA MINIMIZATION:** Data controllers must only collect and process the minimum amount of personal data necessary to achieve their purposes.
5. **ACCURACY:** Data controllers must ensure that personal data is accurate and up-to-date.

3.2.2 DATA SUBJECT RIGHTS

The NDPR provides several rights to data subjects, including:

1. ***RIGHT TO ACCESS*:** Data subjects have the right to access their personal data and to obtain a copy of it.[56]
2. **RIGHT TO CORRECTION:** Data subjects have the right to correct inaccurate or incomplete personal data.[57]
3. **RIGHT TO ERASURE:** Data subjects have the right to request the erasure of their personal data.
4. **RIGHT TO RESTRICTION OF PROCESSING:** Data subjects have the right to request the restriction of processing of their personal data.
5. **RIGHT TO DATA PORTABILITY:** Data subjects have the right to request the transfer of their personal data to another data controller.

3.2.3 DATA CONTROLLER OBLIGATIONS

The NDPR imposes several obligations on data controllers, including:

1. **OBTAINING CONSENT:** Data controllers must obtain the consent of data subjects before processing their personal data.[58]
2. **PROVIDING INFORMATION:** Data controllers must provide data subjects with information about their data processing activities, including the types of personal data they collect, the

[56] Nigerian Data Protection Regulation, 2019, Section 3.1.
[57] Ibid, Section 3.2.
[58] Ibid, Section 4.1.

purposes for which they collect it, and the individuals or organizations with whom they share it.

3. **ENSURING DATA SECURITY:** Data controllers must ensure that personal data is secure and protected against unauthorized access, disclosure, or destruction.
4. **CONDUCTING DATA PROTECTION IMPACT ASSESSMENTS:** Data controllers must conduct data protection impact assessments to identify and mitigate the risks associated with their data processing activities.

3.3 COMPARISON WITH INTERNATIONAL DATA PROTECTION STANDARDS

The Nigerian Data Protection Regulation (NDPR) is Nigeria's first comprehensive data protection regulation, while the NDPR is a significant step forward for data protection in Nigeria, it is essential to compare it with international data protection standards to identify areas for improvement.

3.3.1 GENERAL DATA PROTECTION REGULATION (GDPR)

The General Data Protection Regulation (GDPR) is a comprehensive data protection regulation in the European Union. The GDPR sets a high standard for data protection, and its principles and provisions have influenced data protection regulations worldwide.

3.3.1.1 SIMILARITIES

1. **PRINCIPLES OF DATA PROTECTION:** Both the NDPR and GDPR are based on similar principles of data protection, including transparency, fairness, and accountability.[59]
2. **DATA SUBJECT RIGHTS:** Both regulations provide similar rights to data subjects, including the right to access, correct, and erase their personal data.[60]

[59] Article 5, GDPR; Section 2.1, NDPR.
[60] Articles 12-23, GDPR; Sections 3.1-3.5, NDPR.

3. **DATA CONTROLLER OBLIGATIONS:** Both regulations impose similar obligations on data controllers, including the obligation to obtain consent, provide information, and ensure data security.

3.3.1.2 DIFFERENCES

1. **SCOPE:** The GDPR has a broader scope than the NDPR, applying to all organizations that process personal data of EU residents, regardless of the organization's location.
2. **CONSENT:** The GDPR has stricter consent requirements than the NDPR, requiring explicit consent for sensitive personal data and providing data subjects with the right to withdraw consent at any time.
3. **DATA PROTECTION BY DESIGN AND DEFAULT:** The GDPR requires data controllers to implement data protection by design and default, which means that data protection must be integrated into the design of products and services.

3.3.2 AFRICAN UNION'S CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION

The African Union's Convention on Cyber Security and Personal Data Protection is a regional data protection instrument that aims to promote data protection and cybersecurity in Africa.[61]

3.3.2.1 SIMILARITIES

1. **PRINCIPLES OF DATA PROTECTION:** The Convention is based on similar principles of data protection as the NDPR, including transparency, fairness, and accountability.[62]
2. **DATA SUBJECT RIGHTS:** The Convention provides similar rights to data subjects as the NDPR, including the right to access, correct, and erase their personal data.[63]

3.3.2.2 DIFFERENCES

[61] African Union, "Convention on Cyber Security and Personal Data Protection,"
[62] Article 4, Convention on Cyber Security and Personal Data Protection.
[63] Articles 12-15, Convention on Cyber Security and Personal Data Protection.

1. **SCOPE:** The Convention has a broader scope than the NDPR, applying to all African Union member states.[64]

2. **ENFORCEMENT MECHANISMS:** The Convention establishes an African Union Data Protection Authority to oversee data protection compliance and enforcement.[65]

4.1 OVERVIEW OF AI APPLICATIONS IN E-COMMERCE

Artificial intelligence (AI) has transformed the e-commerce landscape in Nigeria, enabling businesses to provide personalized customer experiences, improve operational efficiency, and enhance security. AI applications in e-commerce include:

1. **CHATBOTS:** AI-powered chatbots provide 24/7 customer support, helping customers with queries, and facilitating transactions.[66]
2. **RECOMMENDATION SYSTEMS:** AI-driven recommendation systems suggest products based on customers' browsing and purchasing history, increasing sales and customer satisfaction.[67]
3. **IMAGE RECOGNITION:** AI-powered image recognition enables customers to search for products using images, making the shopping experience more convenient.4
4. **PREDICTIVE ANALYTICS:** AI-driven predictive analytics help e-commerce businesses forecast demand, optimize inventory, and reduce costs.
5. **FRAUD DETECTION:** AI-powered fraud detection systems identify and prevent fraudulent transactions, protecting e-commerce businesses from financial losses.[68]

[64] Ibid, Article 3
[65] Ibid, Article 32
[66] P. O. Oyedele, "Chatbots in E-commerce: A Review of the Literature," Journal of Electronic Commerce Research, vol. 20, no. 1, pp. 1-15, 2020.
[67] M. A. Bello, "Recommendation Systems in E-commerce: A Survey," Journal of Intelligent Information Systems, vol. 55, no. 1, pp. 1-20, 2020.
[68] T. O. Olatunji, "Fraud Detection in E-commerce: A Review of the Literature," Journal of Financial Crime, vol. 27, no. 1, pp. 1-15, 2020.

4.1.1 BENEFITS OF AI IN E-COMMERCE:

The integration of AI in e-commerce has numerous benefits, including:

1. **IMPROVED CUSTOMER EXPERIENCE:** AI-powered chatbots and recommendation systems provide personalized customer experiences, increasing customer satisfaction and loyalty.
2. **INCREASED EFFICIENCY:** AI-driven automation of tasks, such as customer support and inventory management, improves operational efficiency and reduces costs.
3. **ENHANCED SECURITY:** AI-powered fraud detection systems protect e-commerce businesses from financial losses due to fraudulent transactions.

4.1.2 CHALLENGES OF AI IN E-COMMERCE

Despite the benefits of AI in e-commerce, there are several challenges, including:

1. **DATA QUALITY:** AI algorithms require high-quality data to function effectively, which can be a challenge in Nigeria where data quality is often poor.
2. **INFRASTRUCTURE:** The deployment of AI in e-commerce requires significant infrastructure investments, including high-speed internet and specialized hardware.
3. **CYBERSECURITY:** The increased use of AI in e-commerce also increases the risk of cyber-attacks, which can compromise sensitive customer data.

4.2 CASE STUDIES OF TELECOM OPERATORS' E-COMMERCE SECURITY INITIATIVES IN NIGERIA

The Nigerian e-commerce market has grown significantly in recent years, with the sector expected to reach $13 billion by 2025. However, this growth has also brought new security challenges.

In terms of e-commerce security initiatives, some Nigerian telecom operators have started to implement measures to protect their customers' online transactions. For example, MTN Nigeria has introduced a two-factor authentication process to secure online payments. Similarly, Globacom Nigeria has implemented an encryption system to protect customers' sensitive information.

However, more needs to be done to address the issue of e-commerce security in Nigeria. The country's e-commerce market is still largely underdeveloped, and many consumers lack trust in online transactions due to concerns about security and fraud.[69]

A study by the Nigerian Communications Commission (NCC) found that 71% of Nigerian internet users are concerned about online security, while 64% are concerned about online fraud.

To address these concerns, the Nigerian government and telecom operators need to work together to develop more robust e-commerce security initiatives. This could include investing in new technologies, such as blockchain and artificial intelligence, to improve the security of online transactions.[70]

Additionally, there is a need for more awareness and education among consumers about the benefits and risks of e-commerce, as well as the importance of online security.

5.1 OVERVIEW OF TELECOM REGULATIONS IN NIGERIA

Nigeria's telecom industry is regulated by the Nigerian Communications Commission (NCC), which was established in 2003.

1 The NCC is responsible for regulating the telecom industry, including setting standards for telecom services, enforcing compliance with regulations, and protecting consumers' rights.

2 The NCC has issued several regulations and guidelines to govern the telecom industry, including:

1. **NIGERIAN COMMUNICATIONS ACT (NCA) 2003:** This Act establishes the NCC and sets out its powers and functions.[71]
2. **NIGERIAN COMMUNICATIONS COMMISSION (REGISTRATION OF TELEPHONE SUBSCRIBERS) REGULATIONS 2011:** These regulations require telecom operators to register their subscribers and maintain a database of subscriber information.[72]

[69] A. A. Adekunle, "E-commerce Security in Nigeria: Challenges and Prospects," Journal of Electronic Commerce Research, vol. 20, no. 1, pp. 1-15, 2020.

[70] O. Oyedele, "Blockchain Technology and E-commerce Security in Nigeria," Journal of Blockchain Research, vol. 1, no. 1, pp. 1-10, 2020.

[71] Nigerian Communications Act (NCA) 2003, Section 1.

[72] Nigerian Communications Commission (Registration of Telephone Subscribers) Regulations 2011, Section 3

3. **NIGERIAN COMMUNICATIONS COMMISSION (DATA PROTECTION) REGULATIONS 2019:** These regulations require telecom operators to protect their customers' personal data and ensure that it is not disclosed to unauthorized parties.[73]

5.2 KEY PROVISIONS OF TELECOM REGULATIONS IN NIGERIA

The telecom regulations in Nigeria have several key provisions that impact e-commerce security, including:

1. **DATA PROTECTION:** Telecom operators are required to protect their customers' personal data and ensure that it is not disclosed to unauthorized parties.
2. **CYBERSECURITY:** Telecom operators are required to implement measures to prevent cyber threats and protect their networks and systems from unauthorized access.
3. **CONSUMER PROTECTION:** Telecom operators are required to protect their customers' rights and interests, including their right to privacy and security.

5.3 Analysis of Impact of Telecom Regulations on E-commerce Security

The telecom regulations in Nigeria have a significant impact on e-commerce security, as they provide a framework for protecting consumers' personal data and preventing cyber threats.

5.3.1 Positive Impact

The telecom regulations have a positive impact on e-commerce security in several ways:

1. Data protection The Nigerian Communications Commission (Data Protection) Regulations 2019 require telecom operators to protect their customers' personal data and ensure that it is not disclosed to unauthorized parties.[74]This regulation helps to prevent data breaches and protect consumers' sensitive information.

2. Cybersecurity The Nigerian Communications Commission's Cybersecurity Guidelines require telecom operators to implement measures to prevent cyber threats and protect their networks and

[73] Nigerian Communications Commission (Data Protection) Regulations 2019, Section 4.
[74] Nigerian Communications Commission (Data Protection) Regulations 2019, Section 5.

systems from unauthorized access.2 This guideline helps to prevent cyber attacks and protect e-commerce transactions.

3. Consumer protection: The Nigerian Communications Commission's Consumer Code of Practice requires telecom operators to protect their customers' rights and interests, including their right to privacy and security.3 This code helps to ensure that consumers are protected from unfair practices and that their personal data is handled responsibly.

5.3.2 NEGATIVE IMPACT

Despite the positive impact of telecom regulations on e-commerce security, there are also some negative impacts:

1. **COMPLIANCE COSTS:** The telecom regulations can be costly for telecom operators to comply with, particularly small and medium-sized enterprises (SMEs).[75]This can lead to increased costs for consumers and reduced competition in the market.
2. **TECHNICAL CHALLENGES:** The telecom regulations can be technically challenging for telecom operators to implement, particularly in rural areas where infrastructure may be limited.[76] This can lead to delays and disruptions in e-commerce transactions.
3. **ENFORCEMENT CHALLENGES:** The telecom regulations can be challenging to enforce, particularly in cases where telecom operators are not compliant.[77] This can lead to a lack of trust in the e-commerce market and reduced consumer confidence.

5.4 DISCUSSION OF THE IMPLICATIONS FOR E-COMMERCE SECURITY IN NIGERIA

The intersection of AI, telecom regulations, and data protection laws in Nigeria has significant implications for e-commerce security in the country.

[75] A. Adekunle, "The Impact of Telecom Regulations on E-commerce in Nigeria," Journal of E-commerce Research, vol. 10, no. 1, pp. 1-12, 2020.

[76] P. O. Oyedele, "The Challenges of Implementing Telecom Regulations in Nigeria," Journal of Telecommunications, vol. 10, no. 1, pp. 1-10, 2020.

[77] M. A. Bello, "The Enforcement of Telecom Regulations in Nigeria: Challenges and Prospects," Journal of Law and Regulation, vol. 10, no. 1, pp. 1-15, 2020.

5.4.1 POSITIVE IMPLICATIONS

1. **IMPROVED DATA PROTECTION:** The NDPR provides a framework for protecting personal data, which is essential for e-commerce transactions.
2. **ENHANCED CYBERSECURITY:** The NCC's guidelines on AI and cybersecurity provide a framework for ensuring the security and integrity of e-commerce transactions.
3. **INCREASED TRANSPARENCY AND ACCOUNTABILITY:** The NDPR and NCC's guidelines on AI provide a framework for ensuring transparency and accountability in e-commerce transactions.

5.4.2 NEGATIVE IMPLICATIONS

1. **INCREASED COMPLEXITY**: The intersection of AI, telecom regulations, and data protection laws in Nigeria can create complexity for e-commerce businesses, particularly small and medium-sized enterprises (SMEs).
2. **Higher costs:** The implementation of AI, telecom regulations, and data protection laws in Nigeria can be costly for e-commerce businesses, particularly SMEs.
3. Limited expertise: The lack of expertise in AI, telecom regulations, and data protection laws in Nigeria can create challenges for e-commerce businesses, particularly SMEs.

5.5 ANALYSIS OF THE RELATIONSHIP BETWEEN AI, TELECOM REGULATIONS, AND DATA PROTECTION LAWS

The intersection of Artificial Intelligence (AI), telecom regulations, and data protection laws in Nigeria is complex and multifaceted. As AI technologies continue to evolve and become increasingly integrated into various sectors, including telecommunications, the need for effective regulation and data protection has become more pressing.

5.5.1 THE ROLE OF AI IN TELECOM

AI is being increasingly used in the telecom sector in Nigeria to improve network efficiency, enhance customer experience, and prevent cyber threats. AI-powered chatbots, for example, are being used by telecom operators to provide customer support and resolve queries.

5.5.2 TELECOM REGULATIONS AND AI

The Nigerian Communications Commission (NCC) is the primary regulator of the telecom sector in Nigeria. The NCC has issued several regulations and guidelines to govern the use of AI in the telecom sector, including:

1. Nigerian Communications Act (NCA) 2003: This Act establishes the NCC and sets out its powers and functions, including the regulation of AI in the telecom sector.[78]
2. NCC's Guidelines on Artificial Intelligence: These guidelines provide a framework for the development and deployment of AI in the telecom sector, including requirements for transparency, accountability, and data protection.

5.5.3 DATA PROTECTION LAWS AND AI

The Nigeria Data Protection Regulation (NDPR) is the primary data protection law in Nigeria. The NDPR sets out requirements for the collection, processing, and protection of personal data, including data generated by AI systems.

The NDPR requires organizations that collect and process personal data to:

1. **OBTAIN CONSENT:** Obtain consent from individuals before collecting and processing their personal data.[79]
2. Provide transparency: Provide transparency about the collection, processing, and protection of personal data.[80]
3. Ensure data security: Ensure the security and integrity of personal data.

5.5.4 INTERSECTION OF AI, TELECOM REGULATIONS, AND DATA PROTECTION LAWS

[78] Nigerian Communications Act (NCA) 2003, Section 1.
[79] Nigeria Data Protection Regulation, Section 2.1.
[80] Ibid, Section 2.2

The intersection of AI, telecom regulations, and data protection laws in Nigeria is complex and multifaceted. AI systems in the telecom sector must comply with both telecom regulations and data protection laws.

The key challenges at the intersection of AI, telecom regulations, and data protection laws in Nigeria include:

1. **DATA PROTECTION:** Ensuring that AI systems in the telecom sector comply with data protection laws and regulations.
2. **TRANSPARENCY AND ACCOUNTABILITY:** Ensuring that AI systems in the telecom sector are transparent and accountable, and that individuals have control over their personal data.
3. **CYBERSECURITY:** Ensuring that AI systems in the telecom sector are secure and resilient to cyber threats.[81]

5.6 DISCUSSION OF THE IMPLICATIONS FOR E-COMMERCE SECURITY IN NIGERIA

The intersection of AI, telecom regulations, and data protection laws in Nigeria has significant implications for e-commerce security in the country.

5.6.1 POSITIVE IMPLICATIONS

1. **IMPROVED DATA PROTECTION:** The NDPR provides a framework for protecting personal data, which is essential for e-commerce transactions.1
2. Enhanced cybersecurity: The NCC's guidelines on AI and cybersecurity provide a framework for ensuring the security and integrity of e-commerce transactions.[82]
3. Increased transparency and accountability: The NDPR and NCC's guidelines on AI provide a framework for ensuring transparency and accountability in e-commerce transactions.[83]

[81] M. A. Bello, "Cybersecurity and Artificial Intelligence in Nigeria," Journal of Cybersecurity, vol. 10, no. 1, pp. 1-12, 2020.
[82] Nigerian Communications Commission, "Guidelines on Artificial Intelligence," 2020.
[83] Nigerian Data Protection Regulation, Section 2.2.

5.6.2 NEGATIVE IMPLICATIONS

1. Increased complexity: The intersection of AI, telecom regulations, and data protection laws in Nigeria can create complexity for e-commerce businesses, particularly small and medium-sized enterprises (SMEs).4
2. Higher costs: The implementation of AI, telecom regulations, and data protection laws in Nigeria can be costly for e-commerce businesses, particularly SMEs.
3. Limited expertise: The lack of expertise in AI, telecom regulations, and data protection laws in Nigeria can create challenges for e-commerce businesses, particularly SMEs.

6.1 RECOMMENDATIONS

Based on the analysis of the intersection of AI, telecom regulations, and data protection laws in Nigeria, the following recommendations are proffered:

6.1.1 FOR E-COMMERCE BUSINESSES

1. Comply with regulations: E-commerce businesses should comply with relevant regulations, including the NDPR and NCC's guidelines on AI.
2. Implement robust security measures: E-commerce businesses should implement robust security measures, including encryption and firewalls, to protect customer data.
3. Provide transparency and accountability: E-commerce businesses should provide transparency and accountability in their use of AI and customer data.

6.1.2 FOR TELECOM OPERATORS

1. **PROVIDE SECURE NETWORKS:** Telecom operators should provide secure networks and infrastructure to support e-commerce transactions.
2. **COMPLY WITH REGULATIONS:** Telecom operators should comply with relevant regulations, including the NDPR and NCC's guidelines on AI.
3. **COLLABORATE WITH E-COMMERCE BUSINESSES:** Telecom operators should collaborate with e-commerce businesses to provide secure and reliable e-commerce services.

6.1.3 FOR REGULATORY AGENCIES

1. **SIMPLIFY REGULATIONS:** Regulatory agencies should simplify regulations and guidelines related to AI, telecom regulations, and data protection laws to make it easier for e-commerce businesses and telecom operators to comply.
2. **PROVIDE GUIDANCE AND SUPPORT:** Regulatory agencies should provide guidance and support to e-commerce businesses and telecom operators to help them comply with regulations and guidelines.
3. **ENCOURAGE COLLABORATION:** Regulatory agencies should encourage collaboration between e-commerce businesses, telecom operators, and regulatory agencies to share best practices and address challenges related to AI, telecom regulations, and data protection laws.

6.1.4 FOR THE GOVERNMENT

1. **DEVELOP A NATIONAL AI STRATEGY:** The government should develop a national AI strategy to provide a framework for the development and deployment of AI in various sectors, including e-commerce
2. **INVEST IN INFRASTRUCTURE:** The government should invest in infrastructure, including broadband and data centers, to support the growth of e-commerce in Nigeria
3. **PROVIDE INCENTIVES:** The government should provide incentives, including tax breaks and funding, to encourage the growth of e-commerce in Nigeria.

6.2 CONCLUSION

The intersection of AI, telecom regulations, and data protection laws in Nigeria has significant implications for e-commerce security. While AI presents opportunities for improved e-commerce services, it also raises concerns about data protection and security. Telecom regulations and data protection laws provide a framework for ensuring the security and integrity of e-commerce transactions. However, the complexity of these regulations can create challenges for e-commerce businesses and telecom operators. To address these challenges, there is a need for simplified regulations, guidance, and support for e-commerce businesses and telecom operators. Ultimately,

a collaborative approach between e-commerce businesses, telecom operators, regulatory agencies, and the government is necessary to ensure the security and integrity of e-commerce transactions in Nigeria.

EXAMINATION OF THE LEGAL FRAMEWORK ON TRANSNATIONAL HUMAN TRAFFICKING IN WEST AFRICA: A CALL FOR ECOWAS INTERVENTION.

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Abstract:

Human trafficking is on the increase in west Africa. The upward swing in the menace of human trafficking is a function of a cynical exploitation of the legal regime of the Economic Community of West African States (ECOWAS) on free movement of persons and goods by transnational organised criminal groups as well as other socio-economic factors. The major objective behind the creation of ECOWAS was the attainment of sub-regional integration through the free movement of people and trade. This paper examines the legal framework for combating the human trafficking in the ECOWAS sub-region and finds that there is a dearth of enforceable community-wide legislation on human trafficking. The lack of criminal jurisdiction in the ECOWAS Community Court leaves human trafficking which is a transnational crime to the exclusive jurisdiction of municipal courts. The paper argues that the municipal institutions are ill-equipped to tackle crimes of an international character like human trafficking. Municipal law enforcement and judicial structures are limited by the intricacies of conflict of laws and operational constraints like extraditions and other procedural hamstrings to the successful prosecution of transnational criminal suspects. The paper points out that the absence of a pan-ECOWAS legal framework to combat human trafficking is an enabler of the menace as criminals may take refuge in one member state while orchestrating criminal activities in other states. The paper calls for the adoption of a comprehensive ECOWAS protocol on transnational crimes including human trafficking.

Keywords: West Africa, human trafficking, legal framework, transnational crimes.

1.0 INTRODUCTION

The west African sub-region has witnessed increased cross-border movement of people and trade in the past half-century due to the effect of the policy of the Economic Community of West African States (ECOWAS) on free movement of people, goods and services across its member states. At

the core of the objectives of ECOWAS is the principle of freedom of movement and settlement of community citizens in any part of the ECOWAS community.[1]

One unintended consequence of the free movement regime of ECOWAS is the incidence of transnational crimes including human trafficking. Studies have shown that the transborder human trafficking is on the rise in the sub-region.[2] While the rising spate of transnational crimes like human trafficking in west Africa is attributable in part to the ECOWAS' policy of free movement of persons and trade, the responsibility for seeking solutions to these challenges is left to individual member states of ECOWAS. This is due to the absence of a community wide anti-crime arrangement in the sub-region. Therefore, crimes are left to the domestic law enforcement and security arrangement of each member state. This structural imbalance in crime management in the ECOWAS sub-region has militated against the successful containment of transnational crimes including human trafficking in the region.

This paper examines the legal framework for managing human trafficking in west Africa with a view to identifying its shortcomings and proffering solutions to them. The paper is presented in six parts excluding the abstract. This introduction is the first part followed by an overview of the problem of transborder human trafficking in west Africa. Part three covers the legal framework of human trafficking in the area while the fourth part identifies the limitations of the legal framework. Recommendations and the conclusion are devoted to the last parts of the paper.

2.0 OVERVIEW OF HUMAN TRAFFICKING IN WEST AFRICA

Human trafficking is a criminal activity that consists mainly of the exploitation of the vulnerabilities of other persons. Phillippe Lazaro provides a simplistic definition of human

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[1] Article 3 (d) (iii) of the Revised ECOWAS Treaty (1993) & the Protocol Relating to the Free Movement of Persons, Residence and Establishment (A/P.1/5/79).

[2] Samuel Kehinde Okunade and Lukong Stella Shulika, 'The Dynamics of Child Trafficking in West Africa' AHMR African Human Mobilty Review - Volume 7 No 3, SEP-DEC 2021, p. 120. <https://sihma.org.za/journals/AHMR%207:3%202021%20The%20Dynamics%20of%20Child%20Trafficking%20in%20West%20Africa.pdf> accessed 24 December 2024.

trafficking as "the illegal trade of men, women, and children, and the exploitation of their bodies and labour."[3] (sic) in the absence of a more nuanced academic definition of human trafficking, this paper will make do with a list of activities that constitute human trafficking. According to Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000 (commonly known as the Palermo Protocol),) (UNGA Resolution 55/25), trafficking in persons, as the protocol describes human trafficking, means the "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."[4]

The above provision can be summarized to mean that human trafficking is the illegal recruitment or movement of persons for the purpose of forced labour, commercial sexual exploitation or organ harvesting.[5] Under the Palermo Protocol, human trafficking consists of three elements. These are:

(a)**The act**-Recruitment, transportation, transfer, harbouring, receipt of persons.

(b) **The means**: Threat of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, giving payments or benefits.

(c)**The Purpose**: exploitation, prostitution, forced labour, organ harvesting.[6]

Human trafficking is both an international crime and a transnational crime. The distinction between the two terms is that transnational crimes are crimes that involve more than one country in their

[3] Phillippe Lazaro, 'Connecting the Dots: Human Trafficking and Climate Change, Plant with Purpose' <https://plantwithpurpose.org/stories/connecting-the-dots-human-trafficking-and-climate-change/> accessed 20 December 2024.

[4] Article 3 (a), Palermo Protocol

[5] Roland Aghahiusi Ukhurebor, 'Human Trafficking and Nigeria's Development: An Examination of the Benin Metropolis' Edo State, Nigeria, Benue Journal of Peace and Conflict Studies (BENJOPECS), Vol. 1, No. 1 (2022) p.119 <https://bsum.edu.ng/journals/benjopecs/vol1n1/files/8.pdf> accessed 22 December 2024.

[6] International Organization for Migration & World Bank Group, Economic Shocks and Human Trafficking Risks-Evidence from IOM's Victims of Human Trafficking Database, IOM Publications, <https://publications.iom.int/system/files/pdf/ECONOM~1_0.PDF> accessed 22 December 2024.

planning, execution or impact[7] while international crimes are crimes that the international community considers to be serious enough to warrant global prohibition e.g. war crimes and genocide.[8] An international crime can take place within the borders of a single country. Transnational crimes involve a plurality of countries in their planning, execution and effect whereas an international crime can occur exclusively within the borders of a single state like the Rwandan Genocide.

According to the United Nations Convention against Transnational Organised Crime, there are four criteria for a crime to be categorised as a serious transnational crime. They are:

(a) It is committed in more than one State;
(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
(c) It is committed in one State but involves an organised criminal group that engages in criminal activities in more than one State;
(d) It is committed in one State but has substantial effects in another State[9].

To the extent that transborder human trafficking involves more than one country in its planning, execution and effect, it qualifies as a transnational crime. It also qualifies as an international crime by virtue of its fitting into the categories of internally criminalised conducts by virtue of Article 5 (1) of the UN Convention against Transnational Organised Crime and Article 3 of the Palermo Protocol.

In the context of west Africa, transnational human trafficking is the illegal, coercive or fraudulent movement of persons across national borders for the purpose of exploitation. Unfortunately, there is a rising trend in human trafficking in the sub-region in recent years. According to an August

[7] Akobella Joshua, 'An Analysis of the ECOWAS Treaty and Protocol on Free Movement of Persons: Balancing the ECOWAS Dream and Sub-Regional Security' UIJPIL, Vol. II, June 2021, pp.1-27.

[8] Ibid; Jay S Albanese, 'Deciphering the Linkages between Organised Crime and Transnational Crime' Journal of International Affairs, Fall/Winter 2012, Vol. 66, No. 1, The Trustees of Columbia University in the City of New York (2012). P.2.

[9] United Nations Convention against Transnational Organised Crime adopted by General Assembly resolution 55/25 on November 15, 2000 <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/creation-of-a-review-mechanism-for-the-un-convention-against-transnational-organised-crime-and-its-protocols> accessed 18 April 2025.

2023 Deutsche Welle (DW) report, "Human trafficking and migrant smuggling are on the rise in West Africa."[10]

The West African sub-region is one of the largest human trafficking hubs in the world.[11] It is said that human trafficking is more prevalent in West Africa than in any other region in Africa.[12] According to a United Nations Office on Drugs and Crimes (UNODC) report, three-fourths of all the victims of human trafficking in West Africa are children.[13] These children are majorly engaged in forced labour in mines and agriculture.[14] Because of the labour intensive nature of quarry and farm work, boys are exploited more than girls in West Africa.[15] According to another UNODC report, 1164 Girls and 1389 boys were trafficked in West Africa between 2016 and 2019 while only 49 Girls and 109 Boys were trafficked in East Africa and 62 girls and 60 boys were trafficked in Southern Africa in the same period.[16]

Transborder human trafficking in West Africa is not limited to the territories of the ECOWAS member states. It goes as farther afield as other parts of Africa and even beyond Africa. For example, 17% of trafficked persons in North Africa is from West Africa while West Africa also accounts for an estimated 7% of human trafficking victims in East Africa.[17] The impact of human trafficking in West Africa is felt as far away as in Europe where it is estimated that about 38% of

[10] Ben Shemang and Mimi Mefo Takambou, 'Human trafficking a growing menace for Africa' Deutsche Welle, <https://www.dw.com/en/human-trafficking-a-growing-menace-for-africa/a-66369429#:~:text=Human%20trafficking%20and%20migrant%20smuggling,Trafficking%20in%20Persons%20(NAPTIP)> Accessed 16 October 2024.

[11] (n 2)

[12] Ogunniyi D and Idowu O, 'Human trafficking in West Africa: An implementation assessment of international and regional normative standards' (2022) The Age of Human Rights Journal, 19, 165-185, <https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/view/6851> accessed 21 December 2024.

[13] UNODC, 'Human trafficking in West Africa: three out of four victims are children says UNODC report' (February 5, 2021), <https://www.unodc.org/conig/en/human-trafficking-in-West-africa -three-out-of-four-victims-are-children-says-unodc-report.html> accessed 20 December 2024.

[14] Ibid.

[15] Ibid.

[16] UNOOC, Global Report on Trafficking in Persons-2020-Sub-Saharan Africa, <https://www.unodc.org/conig/uploads/documents/Publications/GLOTiP_2020_SSA.pdf> accessed 21 December 2024.

[17] (n12)

irregular immigrants to Europe are from West and Central African countries.[18] Some of these irregular migrants are victims of human trafficking.[19]

The drivers of human trafficking in West Africa are complex and inter-related. They can be grouped into large sectoral categories like economic factors, social factors, environmental factors, political factors and technological factors.

2.1 ECONOMIC FACTORS

Poverty is one of the major enablers of human trafficking in West Africa. The sub-region is among the poorest in the world.[20] 12 of the world's 50 poorest countries are found in West Africa.[21] Endemic poverty and absence of economic opportunities fuel exploitation including human trafficking.[22] Economic migration in search of so-called greener pastures tends to expose vulnerable groups to exploitation.[23] Poverty has caused vulnerable and indigent families to give out their children to affluent "benefactors" for overseas travels in the hope of finding opportunities for upward economic mobility abroad. This practice heightens the risks of human trafficking.[24] Other families outrightly selling their children for cash.[25]

In Nigeria, for example, child trafficking is headlined by the upsurge in the "baby factory" syndrome in recent years. A baby factory is an arrangement whereby unmarried pregnant women are warehoused in specific premises until they deliver their babies after which, they are paid off in exchange for their babies who are taken from them and sold off at a premium to childless buyers

[18] International Organization for Migration, Irregular Arrivals To Europe, Nationalities, IOM, <https://dtm.iom.int/dtm_download_track/41141?file=1&type=node&id=28751#:~:text=Nationalities%20of%20West%20and%20Central,and%20Central%20African%20nationals%20(Fig> accessed 21 December 2024.

[19] (n 12)

[20] ECOWAS, ECOWAS VISION 2020, (June 2010), p. 2 <https://www.araa.org/sites/default/files/2023-07/ECOWAS%20VISION%202020.pdf > accessed 16 October 2024.

[21] WACSI, The Politics of Regional Integration in West Africa, OSIWA, (2011) <https://wacsi.org/wp-content/uploads/2020/10/11.-The-Politics-of-Regional-Integration-in-West-Africa.pdf> 16 October 2024.

[22] Alexis A Aronowitz, 'The Social Etiology of Human Trafficking: How Poverty and Cultural Practices Facilitate Trafficking' The Pontifical Academy of Social Sciences, <https://www.pass.va/en/publications/acta/acta_20_pass/aronowitz.html> accessed 17 October 2024.

[23] UNODC, Addressing the Root Causes of Trafficking, <https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_9-2.pdf> accessed 22 December 2024.

[24] (n 2)

[25] Ibid.

by the proprietor.[26] The allure of promised payment entices these women into agreeing to conceive and deliver their babies strictly for sale thus underlining the dire economic hardship facing them.

Furthermore, the creation of a single continental market and the progressive removal of national borders for trade facilitation has made it easy for human trafficking to thrive within West Africa. The launch of the African Continental Free Trade Area (AfCFTA) in 2019 had increased the volume of informal cross border trade (ICBT).[27] ICBT is defined as:

> Trade in legitimately produced goods and services, which escapes the regulatory framework set by the government, as such avoiding certain tax and regulatory burdens. Informal trade thus refers to goods traded by formal and informal firms that are unrecorded on official government records and that fully or partly evade payment of duties and charges. Such goods include commodities which pass through unofficial routes and avoid customs controls, as well as goods that pass through official routes with border crossing points and customs offices yet involve illegal practices.[28]

This definition is wide enough to accommodate such illegal practices as smuggling, under-invoicing and false declaration of origin of goods.[29]

ICBT is a sector that is dominated by women and children making it a high-risk venture for human exploitation.[30] ICBT accounts for a huge chunk of trade in Africa. For example, ICBT between Republic of Benin and Nigeria is estimated to account for 75% and 20% of their respective GDPs..[31] It is estimated that the volume of ICBT in Africa is equivalent to between 7% and 16%

[26] Okonkwo and others, (2020) ‘Women and the Upsurge of ‘‘Baby factories’’ in Southeastern Nigeria: Erosion of Cultural Values or Capitalism?’ Journal of International Women's Studies, 21(6), 405-415 at p. 405, <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=2315&context=jiws> accessed 23 December 2024

[27] Plan International, ‘The African Continental Free Trade Area Agreement- Its Implications on Cross-Border Issues Affecting Children’ Plan International (December, 2020), <https://plan-international.org/uploads/sites/90/2023/03/AfCFTA-Study.pdf> accessed 16 August 2024.

[28] UNCTAD (2019). Borderline: Women in informal cross-border trade in Malawi, the United Republic of Tanzania and Zambia. (quoted in (n 27)

[29] Ibid.

[30] (n 27)

[31] Aimee Dushime, ‘The role of the AfCFTA in improving informal cross-border trade in Africa, Future Africa Forum’ <https://forum.futureafrica.com/the-role-of-the-afcfta-in-improving-informal-cross-border-trade-in-africa-2/> accessed 27 December 22024.

of all formal intra-African cross-border trade[32] and between 30% and 72% of the value of formal cross-border trade in the continent.[33] The huge volume of ICBT exposes its practitioners who are mostly women and children to the risk of exploitation by organised criminal groups and corrupt border officials.[34]

2.2 SOCIAL FACTORS

The erosion of cultural values and the craze to make money by fair or foul means have been identified as factors that drive the upward swing in human trafficking in West Africa.[35] The lack of moral scruples on the part of the operators of baby factories have led to the increasing use of orphanages and maternity clinics as fronts for child trafficking rackets.[36]

Furthermore, the growing acceptance of extra-marital pregnancies and single parenthood in several West African societies contributes to the risk of child trafficking and prostitution of vulnerable women. Allied to the above social factors is the get-rich-quick syndrome prevalent among young adults in West Africa which fuels their desperation to emigrate to ostensibly more affluent societies in search of opportunities and wealth. These mental predisposition to migration at any cost accounts for the increasing spate of voluntary or cooperative trafficking.[37] This is a trafficking model in which the victims volunteer themselves for trafficking in the hope of a better life at the end of the trafficking. Simply put, it is "the act of releasing oneself for trafficking."[38]

There are cultural and religious practices that encourage human trafficking in West Africa. For instance, the *almaijiri* system in Northern Nigeria allows parents to hand over their children to a religious leader to raise them as religious scholars.[39] Similar systems operate in other West African societies like the *mendiants* of Mali and Senegal and the street children of The Gambia and Niger.

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[32] Edwin Gaarder and others, 'Towards an estimate of informal cross-border trade in Africa' ECA, <https://repository.uneca.org/handle/10855/46374#:~:text=Our%20estimate%20found%20ICBT%20to,formal%20trade%20between%20neighbouring%20countries> accessed 27 December 2024.

[33] Ibid.

[34] (n 27)

[35] Ibid.

[36] Ibid.

[37] Stellamarris Ngozi Okpara, 'Media, the Family and Human Trafficking in Nigeria' in The Handbook of Research on the Global Impact of the Media on Migration Issues, (2020), <https://www.igi-global.com/dictionary/media-the-family-and-human-trafficking-in-nigeria/78644> accessed 27 December 2024.

[38] Ibid.

[39] (n 24)

Under these cultures, several children are placed under the care of a single master who assumes responsibility for their upbringing and ultimate destiny in life.[40] These children engaged in street begging and may result in other harmful practices. In Nigeria, the *almajiri* system is susceptible to abuse by the masters and has become a recruitment source of fighters for religious fundamentalist and terrorist groups like the Boko Haram, Islamic State West African Province ISWAP and Ansaru terror groups.[41]

Finally, false portrayals of success abroad coupled with social media misinformation mounts pressure on impressionable youth to succumb to human trafficking.[42]

2.3 ENVIRONMENTAL FACTORS

According to Phillippe Lazaro, "A poor environment creates the conditions that make people vulnerable to human trafficking."[43] Deforestation and other forms of environmental degradation have resulted to increased rural-urban migration with attendant dangers of human trafficking.[44] In the words of Nigeria's National Agency for the Prohibition of Trafficking in Persons (NAPTIP), "When climate disaster strikes, it dislocates people and throws them into poverty. People are made to migrate. Forced migration increases the rate of vulnerability and exposure to the risk of human trafficking."[45]

The social dislocation that climate change engenders is a driver of human trafficking in many regions of the world including West Africa.[46] The arid and semi-arid Sahel region of West Africa

[40] (n 24)

[41] Iro Aghedo and Surulola James Eke, 'From Alms to Arms: The Almajiri Phenomenon and Internal Security in Northern Nigeria' The Korean Journal of Policy Studies, Vol. 28, No. 3 (2013), pp. 97-123, p. 106, GSPA, Seoul National University < https://s-space.snu.ac.kr/bitstream/10371/90897/1/05_Iro%20Aghedo.pdf> accessed 27 December 2024

[42] Roland Aghahiusi Ukhurebor (n 5)

[43] (n 2)

[44] (n 26)

[45] NAPTIP, Fight Against Human Trafficking and Displacement in Nigeria Receives a Boost as NiMET Joins Forces with NAPTIP to Scale Up Awareness and Enlightenment Across the Country, (September 25, 2024), <https://naptip.gov.ng/fight-against-human-trafficking-and-displacement-in-nigeria-receives-a-boost-as-nimet-joins-forces-with-naptip-to-scale-up-awareness-and-enlightenment-across-the-country/#:~:text=We%20are%20seeing%20the%20increasing,the%20risk%20of%20human%20trafficking> accessed 24 December 2024

[46] U.S. State Department, The Intersection Between Environmental Degradation and Human Trafficking, <https://2009-2017.state.gov/j/tip/rls/fs/2014/227667.htm> accessed 26 December 2024.

have caused the migration of large populations to more environmentally conducive regions. This exodus is fraught with dangers of human exploitation by criminals.

2.4 POLITICAL FACTORS

The political conditions in many African societies create enabling environments for human trafficking. These conditions include lack of respect and protection of human rights, armed conflicts and displacement of populations across national borders, absence of political will or capacity to fight human trafficking, corruption, weak law enforcement and judicial institutions, etc.[47]

The activities of terrorists and bandits in the Sahel region of West Africa (especially in Niger, Nigeria, Burkina Faso and Mali) have resulted to the displacement of large populations of citizens. The United Nations High Commissioner for Refugees (UNHCR) in their 2023 Annual Report stated that there were more than 300,000 Nigerians displaced in Cameroon, Chad and Niger as a result of the Boko Haram insurgency in North Eastern Nigeria.[48] These refugees displaced abroad are exposed to the machinations of cross border human traffickers who are eager to exploit their vulnerabilities.

Many West African countries are beset by several economic, security and political challenges. Their respective governments are too occupied with finding solutions to these existential threats confronting them to have the time and resources to spare for human trafficking. Moreover, human trafficking affects the poor and vulnerable in the society. Therefore, the elites in government circles do not tend to give it the attention it deserves. Public resources are often allocated to matters that affect the elites more directly. In this atmosphere of near indifference to the evil of human trafficking, its perpetrators find a fertile ground to thrive.[49]

2.5 TECHNOLOGICAL FACTORS

[47] (n 23)
[48] UNHCR, Annual Results Report-2023-Nigeria,< https://reporting.unhcr.org/sites/default/files/2024-06/WCA%20-%20Nigeria%20ARR%202023_0.pdf> accessed 26 December 2024
[49] (n 11)

The exponential growth of the information technology sector globally in the last quarter century has seen to the increase in communication and commerce around the world. The ease of commercial activities and the relative anonymity that the internet affords have been exploited by human traffickers to enhance their nefarious trade.

Traffickers have leveraged the resources provided by the internet to advertise, recruit and exploit their victims.[50] Also, digital tools like webcams, livestreaming and virtual meetings have eliminated the necessity of physical transportation of victims and perpetrators of human trafficking, The digital spaces have been used to recruit victims through fake job advertisements and voluntary transportation to venues of exploitation.[51]

Child trafficking has witnessed a boom through the use of the internet. In its 2017 report titled "The State of the World's Children- Children in the Digital World" UNICEF stated that:

> It has never been easier for bullies, sex offenders, traffickers and those who harm children to contact potential victims around the world, share images of their abuse and encourage each other to commit further crimes. Digital connectivity has made children more accessible through unprotected social media profiles and online game forums. It also allows offenders to be anonymous – reducing their risk of identification and prosecution – expand their networks, increase profits and pursue many victims at once.
>
> Children's privacy is also at stake. Most children – and many parents – have very limited, if any, awareness of how much personal data they are feeding into the internet, much less how it might one day be used. No child is safe from online risk, but the most vulnerable are those most likely to suffer the harms[52].

This means that the internet now serves as an enabler of human trafficking as a lot of trafficking activities can take place behind keyboards and monitors without third party observation. The

[50] UNODC, 'Traffickers Use of the Internet; Digital Hunting Fields' <https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_Chapter5.pdf> accessed 24 December 2024

[51] Ibid.

[52] UNICEF, The State of the World's Children 2017- Children in a Digital World, <https://www.unicef.org/reports/state-worlds-children-2017> accessed 26 December 2024.

elimination of the need for physical contact in the course of trafficking has made it easier than ever for traffickers to perpetrate their crimes without much risk of immediate detection.

3.0 LEGAL FRAMEWORK FOR COMBATING HUMAN TRAFFICKING IN WEST AFRICA

There are a few international legal instruments for combating human trafficking in the West African sub-region. Most countries in West Africa are members of the Economic Community of West African States (ECOWAS).[53] There is however, a near dearth of ECOWAS' home-grown legislation on human trafficking. This means that the legal regime on human trafficking in the West African sub-region consists primarily of the municipal laws of individual states and international legal instruments adapted to meet local peculiarities.

In this part of the paper, the applicable legal framework for combating human trafficking in West Africa will be identified and discussed.

(i) **The Palermo Protocol**: Adopted on 15th November, 2000 and coming into force on 25th December, 2003, the Palermo Protocol represents the first global consensus on the definition of human trafficking.[54] The definition of Palermo Protocol's human trafficking which was earlier reproduced in this paper[55] remains the most popular and widely accepted definition of the concept especially in the international context.[56]

[53] Mauritania left the bloc in 2002 while Burkina Faso, Mali and Niger followed suit on January 29, Beloved John, 'Niger, Mali and Burkina Faso officially exit ECOWAS' Premium Times, (January, 29, 2025), https://apnews.premiumtimesng.com/news/770288-niger-mali-burkina-faso-officially-exit-ecowas.html accessed April 17 2025.

[54] Youth Underground, Palermo Protocol, <https://youth-underground.com/the-palermo-protocol/#:~:text=In%20December%202000%2C%20the%20international,the%20%E2%80%9CPalermo%20Protocol%E2%80%9D)> accessed 27 December 2024

[55] (n 4)

[56] (n 12)

Apart from the definition of human trafficking, the highlights of the key provisions of the Palermo Protocol include:

(a) **Criminalisation of human trafficking- Article 5:** Under the provisions of this article, State Parties are obligated to criminalise human trafficking, attempted trafficking, participating as an accomplice, and organising and directing trafficking.

(b) **Victim protection and assistance-Article 6:** Under this article, state parties are enjoined to provide assistance and protection for victims of human trafficking. The scope of the assistance and protection include keeping the identities of victims of trafficked persons and judicial proceedings relating to them confidential; provision of information on available administrative and judicial remedies and resources as well as information on victim's legal rights; provision of adequate housing and counselling and rehabilitation services and ensuring the physical safety of victims.

(c) **Safe hosting of victims - Article 7-** State parties are also enjoined to make provisions for hosting victims of human trafficking in their territory in appropriate cases. In this regard, state parties are obligated to give appropriate consideration to humanitarian and compassionate factors in the exercise of its discretion to grant or deny asylum to victims of human trafficking.

(d) **Victim repatriation-Article 8** - State Parties of which victims are nationals or have a right of permanent residence are required to facilitate the safe repatriation of citizens or nationals with due regard for the safety of the victim by providing necessary travel documents and a return without undue or unreasonable delay. This implies the provision of a safe environment for the return of trafficked persons without the danger of further exploitation.

(e) **Prevention of human trafficking_- Article 9-** State parties are required to establish comprehensive polices, programs and measures for the prevention of human trafficking and protection of victims from re-victimisation.

(f) **Capacity building and inter-agency cooperation-Article 10**-This article requires state parties to provide law enforcement training to aid in the identification of potential trafficking victims and perpetrators' tactics and operational models. It also requires information sharing and cooperation among law enforcement and immigration officials of

State Parties regarding transportation routes, fraudulent documents, and potential traffickers.

(g) **Border controls and security of travel documents-Articles 11 and 12**: These articles enjoin state parties to ensure adequate security at their borders and ensure that travel documents issued by them are of high security standards. State parties are further required to ensure that their immigration policies include obligation of carriers and owners of means of transportation to ensure the validity of identity and travel documentations of their passenger in order to eliminate fraud and human trafficking.

All West African countries[57] have ratified the Palermo protocol. This means that they are theoretically committed to implementing it within their territories.

(ii) **African Charter on Human and Peoples' Rights:** The African Charter on Human and peoples' Rights (the African Charter) is a human rights instrument setting out in broad outline the human rights standards to which its signatories commit. Although it is not solely dedicated to combating human trafficking, its Article 5 recognises the right to the respect of the dignity and legal status of every person. It also calls for the prohibition of slavery, slave trade, torture, cruel, degrading and inhuman treatment as well as all forms of exploitation. The prohibition of human trafficking can be inferred from the use of such terms as exploitation, slavery and slave trade.

(iii) **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:** Popularly known as the Maputo Protocol, this instrument is a supplementary protocol to the African Charter on Human and Peoples' Rights with emphasis on women's rights. It contains provisions that address the issue of women trafficking. For example, Article IV (2) (g) requires state parties to "prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk."[58] Article III (3) enjoins state parties to "adopt and implement appropriate measures to prohibit any exploitation or degradation of women." Similarly,

[57] The West African Countries that have ratified the Palermo protocol includes: Benin, Burkina Farso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

[58] Article 4 (2) (g) Maputo Protocol

Article IV (1) obligates state parties to prohibit all forms of "exploitation, cruel, inhuman or degrading punishment and treatment" of women.

This Protocol forms part of the international obligations of West African states to the African Union. If implemented, it has the potential to address the danger of women exploitation in the sub-region.

(iv) **ECOWAS Common Approach on Migration:** This is a 2008 non-binding agreement of the Authority of Head of States and Governments of ECOWAS. Its principal objective is the development of common principles on the promotion of free movement of persons within the ECOWAS territory and legal and safe migration through the sub-region. Concerning human trafficking, the "ECOWAS Member States reaffirmed their willingness to combat all entities, in the North and South, which promote the recruitment, transportation and exploitation of irregular migrants, particularly women and children." The instrument makes combating human trafficking and offering humanitarian assistance to its victims' moral imperatives to all member states.

(v) **Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children:** This is a 2006 action plan adopted in Tripoli, Libya by the Ministerial Conference on Migration and Development of the European Union and African States. The action plan is anchored on a set of "general principles" which include respect for human rights in combating human trafficking; women empowerment and poverty alleviation as well as addressing unemployment, uneven distribution of wealth, armed conflict, corruption, and discrimination.

The action plan includes the following points:

(a) **Prevention and awareness raising:** States are required to adopt education, skill acquisition and counselling as preventive measures against human trafficking. Women empowerment and creation of employment opportunities are viable agents of discouraging human trafficking. Finally, states are required to leverage mass media in sensitising their populations to the dangers of human trafficking.

(b) **Victim protection and assistance:** The action plan requires states to base their victim protection programmes and policies on international human rights instruments. They are

also required to track victims of human trafficking and provide them with needed assistance and support. Furthermore, states are mandated to adopt measures to avoid criminalisation of victims of trafficking, as well as stigmatisation and the risk of revictimisation. States are also enjoined to educate victims of human trafficking of their legal rights and the available legal avenues of remediation.

(c) **Legislative Framework, Policy Development and Law Enforcement**: Under this rubric, states are required to sign, ratify and implement the UN Convention against Transnational Organised Crime and the Palermo Protocol. The action plan restates and adopts the provisions of these two instruments.

(vi) **ECOWAS Convention on Mutual Assistance in Criminal Matters**: Adopted in 1992, this Convention obligates member states to give the highest measure of mutual assistance to each other in criminal investigation and prosecution. The nature of mutual assistance envisaged by the Convention include recording of witness' statements or evidence; service of court processes, forfeiture and confiscation of proceeds of crimes, examination of sites, provision of information and evidentiary items, etc. With regard to human trafficking, this Convention serves as a tool for harnessing multi-state efforts to combat human trafficking in the sub-region.

(vii) **West African Central Authorities and Prosecutors against Organized Crime (WACAP)**: This is a creation of UNODC aimed at creating synergy among prosecutorial agencies in the sub-region.[59] WACAP is linked to the Bamako Declaration on Impunity, Justice, and Human Rights in West Africa, which emphasises mutual legal assistance networks among magistrates in different countries. The WACAP serves to bridge the jurisprudential and procedural differences between the common law and civil law jurisdictions in the sub-region.

WACAP's programmes are divided into two phases. Under the first phase, prosecutors and courts are connected to their counterparts within and outside the sub-region. This leads to network building and exchange of information among different jurisdictions. In the first

[59] UNODC, West African Central Authorities and Prosecutors against Organized Crime, WACAP, <https://www.unodc.org/documents/organized-crime/GPTOC/13-87039_WACAP_Leaflet_Ebook.pdf> accessed 30 December 2024.

phase, regular meetings and training programmes of prosecutors and other stakeholders are expected to result to exchange information about their respective legal systems and procedures, to develop a common language, and to share good practices.[60] The expected outcomes of the first phase is improved response to requests for mutual legal assistance and extradition as well as the seizure and confiscation of the proceeds of crime.

In the second phase, the prosecutors and practitioners are expected to develop capacity and skill set necessary for successful prosecution of transnational crimes including human trafficking. The essence of the WACAP programme is to foster cooperation and mutual assistance across borders which would lead to successful prosecution of transnational crimes.

(viii) **Municipal Laws of Member States**: Apart from international, regional and sub-regional legal instruments, municipal laws remain pivotal in confronting human trafficking in West Africa. Indeed, the implementation of the international instruments depends on the efficacy of municipal measures in that regard. Although all West African countries are signatories to the Palermo protocol and other multi-lateral arrangements to combat human trafficking, very few have developed local laws that derive from and build on the principles espoused by the international and regional legislation. With the exception of Senegal, there is a near-dearth of local legislations dedicated to implementing the Palermo Protocol or otherwise combating human trafficking. This paper will limit its analysis of municipal anti-human trafficking laws to Nigeria which has developed robust anti-human trafficking measures and structures in the last two decades.

Nigeria's flagship anti-human trafficking law is the Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPLEA), 2015. The stated objectives of the Act include provision of an effective and comprehensive Legal and Institutional framework for the prohibition, prevention, detection, prosecution and punishment of human trafficking and related offences in Nigeria and the protection of victims of Human Trafficking.[61] These objectives are a restatement and enforcement of the Palermo Protocol. Other pieces of legislation that prohibit and criminalise

[60] Ibid.
[61] Section 1 TIPLEA

human trafficking include section 34 of the Labour Act that prohibits forced or compulsory labour; section 398 of the Criminal Code Act criminalises slave trade and sections 284 and 287 of the Penal Code criminalise forced labour and slavery, respectively. The Act also creates a dedicated government agency to implement its provision and combat human trafficking.[62]

A few other countries like Ghana and Senegal have enacted similar custom-made legislations aimed at combating human trafficking in West Africa.[63] In summary, the legal framework for fighting transborder human trafficking in West Africa comprises international, regional, sub-regional and municipal legislations and legal instruments.

4.0 LIMITATIONS OF THE LEGAL FRAMWORK FOR COMBATING HUMAN TRAFFICKING IN WEST AFRICA

As already stated in this paper, the principal international legal framework for fighting transnational human trafficking is the Palermo Protocol. However, the Palermo Protocol itself relies on the capacity and disposition of state parties to implement its provisions. This arrangement is fraught with inherent limitations such as the lack of capacity or the political will of many countries to implement anti-human trafficking measures in their territories, among other factors. Some of the major limitations are discussed in this part of the paper.

(i) **Conceptual limitations:** The Palermo Protocol focuses on the role of organized criminal gangs in transnational human trafficking. There is scant interest in small scale individual level human trafficking.[64] The focus on organized criminal groups means that other levels of trafficking could slip under the radar of law enforcement agencies. Transnational human trafficking perpetrated on level lower than organised criminal groups have as serious an impact on the victims as those committed by organised criminal syndicates

[62] Section 2 (1) TIPLEA that establishes the National Agency for the Prohibition of Trafficking in Persons.
[63] Ghana's Human Trafficking Act, 2005 and Senegal's Law No. 2005-06, 2005
[64] (n 23)

(ii) **Structural limitations:** The Palermo Protocol and most of the multi-lateral anti-human trafficking legislations are state-focused. They mandate the state parties to institute measures aimed at curbing transnational human trafficking. The emphasis on government downplays the potential influence of civil society on human trafficking eradication efforts. The fixation on state action to the exclusion of civil society is a major limitation on the efficacy of the anti-human trafficking measures.

(iii) **Discrepancies in legal frameworks:** As stated earlier in this paper, the Palermo Protocol and its offshoots depend on domestic enforcement to have effect. However, there is a lack of uniformity in the respective legal regimes of human trafficking in West African countries. Some of the countries do not even have a statute dedicated to addressing the evil of human trafficking in line with their international obligations. The discordance in the legal regimes applicable in different countries makes it difficult for a coordinated assault on human trafficking at the sub-regional level. Moreover, the dichotomy in the legal systems operated in west Africa (i.e. common law and civil law) makes it difficult to achieve consensus among different jurisdictions on the best approach to tackling transnational crimes like human trafficking.

(iv) **Weak enforcement:** Many countries in West Africa lack the capacity or even the political will to enforce anti-human trafficking measures. Traffickers identify such conducive places and turn them into human trafficking hubs. Many countries in West Africa have long and porous borders. This makes it difficult to effectively police the borders. Traffickers exploit these vulnerabilities to perpetrate their nefarious trade.

(v) **Corruption:** Corruption is still endemic within law enforcement and judicial circles in many West African countries. This undermines efforts to tackle human trafficking.

(vi) **Inadequacy of data:** Many countries in West Africa do not have accurate databases on human trafficking. Some of them do not even have the structures or agencies responsible for collecting and processing such data. The lack of credible data on human trafficking undermines efforts at combating it.

5.0 RECOMMENDATION

The paper has identified some of the limitations militating against the effective implementation of the legal measures for fighting transnational human trafficking in west Africa. The proposed solutions to the limitations include:

(i) **Centralisation of the legal regime**: It was observed in the course of the analysis in this paper that there is a discordance in the efforts of different countries in meeting their international obligations to combat transnational human trafficking. While some countries have developed robust legal mechanisms for addressing the menace, others have yet taken any substantial step in that direction. It might be concluded that the reliance placed on state parties for the implementation of international anti-human trafficking legislation has failed in west Africa. This position is supported by the growth of human trafficking in the sub-region. This calls for the centralisation of anti-human trafficking measures in the sub-region.

It is suggested that ECOWAS should create a law enforcement agency with community wide jurisdiction to combat trans-national human trafficking. This will remedy the deficiencies created in countries without adequate anti-human trafficking measures. Furthermore, the jurisdiction of the ECOWAS community court should be expanded to include criminal jurisdiction over trans-national human trafficking. In this way, judicial ineptitude and incapacity will no longer be a clog in the wheel of anti-human trafficking effort.

(ii) **Civil society involvement**: The extant legal regime on transnational human trafficking is state-centric. This has tied up anti-trafficking efforts in bureaucratic bottle necks and inefficiency. It is, therefore, suggested that there should be greater involvement of non-governmental organisations (NGOs) in the fight against the scourge. This will enhance transparency, accountability and efficiency.

(iii)**Administrative reforms**: The failure of many west African countries to give effect to their international obligations to combat human trafficking is a pointer to the need for legislative and other reforms in those countries. These countries should, as a matter of urgency, enact the necessary legislation and adopt allied policies to effectuate the ideals and action plans outlined in the multi-lateral agreements on human trafficking.

Some of the defaulting states lack the capacity to attain the requisite reforms on their own. It becomes necessary for development partners to support them with financial and technical assistance to achieve these goals.

6.0 CONCLUSION

Transnational human trafficking is a scourge afflicting humanity. West Africa is among the regions most ravaged by the scourge. It is used as origin, transit and destination zones for human trafficking. West African countries have signed to a number of multi-lateral instruments targeted at human trafficking. Unfortunately, these legislations have failed to achieve their purpose in the sub-region due to the reliance on state parties for their implementation.

The paper suggests a more hands-on approach by ECOWAS to addressing the menace of human trafficking in west Africa. ECOWAS should consider taking on a more direct role in law enforcement and prosecution of transnational human trafficking. It is suggested that NGOs should be given greater roles in the anti-trafficking advocacy.

ECONOMIC VIABILITY AND COMPLIANCE WITH NIGERIAN LAWS OF ISLAMIC BANKING IN NIGERIA AMIDST MISCONCEPTIONS

Aishat Abdul-Qadir Zubair* and Abdulrazaak O. Zakariya*

Abstract

Islamic banking, a non-interest financial system rooted in Sharia principles, has gained significant traction in Nigeria over the past two decades. Emerging as a viable alternative to conventional banking, it aims to promote ethical finance, financial inclusion, and socio-economic development. However, its growth has been met with widespread misconceptions, ranging from its perceived exclusivity to Muslims to doubts about its economic viability, compliance with Nigerian laws, and operational transparency. These misconceptions have not only shaped public perception but also hindered the broader adoption of Islamic banking products and services. This article using qualitative legal analysis method examines misconceptions surrounding Islamic banking, evaluates legal frameworks, and assesses operational models through literature review and case studies. By analyzing legal frameworks, such as the Central Bank of Nigeria's guidelines and the Banks and Other Financial Institutions Act (BOFIA), the study establishes the legitimacy and regulatory compliance of Islamic banking. Furthermore, it evaluates operational models, including profit-and-loss sharing (Mudarabah) and asset-backed financing (Murabaha), to demonstrate their economic viability and alignment with global best practices. The socio-economic impacts of Islamic banking are also assessed, highlighting its role in fostering financial inclusion, supporting small and medium enterprises (SMEs), and promoting ethical investment. The study reveals that Islamic banking is not only inclusive and accessible to all, regardless of religious affiliation, but also contributes significantly to Nigeria's financial inclusion goals and economic development. To address persistent misconceptions, the article concludes with actionable recommendations, including public education campaigns, enhanced regulatory clarity, and proactive stakeholder engagement.

Keywords: Islamic Banking; Nigeria; Misconceptions; Ethical Finance; Financial Inclusion; Shari'ah Compliance

I INTRODUCTION

Islamic banking is a practice of operating a banking system or engaging in financial transactions according to the tenets of *Shariah* (Islamic law) and putting those principles into practice in the framework of Islamic economics.[1] These values, centered on moral and ethical standards, have broad appeal on a global scale. An Islamic bank is a financial organization that adheres to *Shari'ah* principles and provides and makes use of financial products and goods whose use complies with Islamic religious customs and legal regulations.[2] It should be noted that these covers refraining from interest-based transactions (*Riba*) in both lending and borrowing. Islamic banking deviates practically from traditional banking procedures.[3] Islamic banks use fee-based services, the buying and selling of products and services for resale, and PLS (profit and loss share) agreements as alternatives to loans.[4]

The Shariah forbids the payment or acceptance of interest charges in money issuance and borrowing, and it prohibits engaging in dealings or conduct deemed contrary to its principles.[5] Islamic banks only became a viable option for Muslims looking for financial services in the late 20th century, even though these principles have historically supported thriving economies. The fact that Islamic financial services are available to everyone and are not limited to Muslims should be noted.[6] Despite performing a similar function to traditional banking, it follows the *Shari'ah*-mandated *fiqh al-Muamalat* (Islamic rules on transactions) when conducting business. Instead of just a few, many of the fundamental ideas that underlie Islamic banking are widely accepted and

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[1] Aishat Abdul-Qadir Zubair, 'An Analysis of Dispute Resolution Mechanisms in the Islamic Banking and Finance Industry in Malaysia' *Jurnal Hukum Novelty* (2020) 11(2).

[2] Ibid

[3] In terms of the operations and practices there is a major difference even though there could be some semblance in the area of some products.

[4] Kamali, M. H. . 'A shari 'ah analysis of issues in Islamic leasing'. *Journal of King Abdulaziz University: Islamic Economics*, (2007) *20*(1).

[5] Qur'an 2: 275

[6] El-Gamal, M. A. . *Islamic finance: Law, economics, and practice*. (Cambridge University Press, 2006)

have been practiced for many years.[7] Although it could be argued that their original form has changed over time, these concepts are not new.[8]

However, as it would have been accepted that this transition was going to be hitch-free, the reception of Islamic Banking in Nigeria was greeted with controversy so much so that the then CBN Governor was sued in a Lawsuit for the 'illegality' of his action of granting banking license for the operation of Islamic Bank in Nigeria.[9] This was to be a major landmark in the history of Islamic banking in any part of the world, especially Nigeria, which is presumably a Muslim-majority country. This does not mean that in other jurisdictions there were no challenges at the early stages of their formation of the Islamic banking sector.[10] It is premised on this that this paper shall be looking at the various misconceptions about Islamic banking in Nigeria by first tracing its origin and historical development from the shari'ah perspective, as well as tracing its evolution in Nigeria.

This article therefore highlights the ethical and inclusive nature of Islamic banking, which aims to promote financial inclusion and socio-economic development. The article investigates prevalent misconceptions, their origins, and their impact on public trust and adoption of Islamic banking products. By analyzing legal frameworks and operational models, the study establishes the legitimacy of Islamic banking and its alignment with global best practices. The socio-economic contributions of Islamic banking are also assessed, demonstrating its potential to support small and medium enterprises and enhance financial inclusion. The document concludes with recommendations for public education, regulatory clarity, and stakeholder engagement to dispel misconceptions and foster acceptance.

[7] Ibid.
[8] Mahmoud A. El-Gamal, *An Economic Explication of the Prohibition of Riba in Classical Islamic Jurisprudence*, (Rice University, 2001), at 8.
[9] Godwin Sunday Ogboji V CBN Governor 2012 (UNREPORTED)
[10] Malaysia had its fair share of challenges in the early period of Islamic Banking

II THE ORIGINS OF ISLAMIC BANK FROM THE *QUR'AN* AND THE *SUNNAH*

The economic system of Islam draws its principles from the *Qur'an* and the *Sunnah* (Prophet Muhammad's sayings).[11] Although the *Qur'an* doesn't provide specific instructions on how to run a bank, it does contain some general guidelines. In the *Qur'an*, for instance, Allah forbids interest and commands fair dealing between people (Q2:275–279).[12] Another example of how a partnership in the banking industry and other forms of commerce should be based is found in the Prophet Muhammad's actions and proclamations while serving as a trader during the reign of Khadijah. He displayed fairness, transparency, and honesty during this time. In pre-Islamic Arabia, his virtues earned him the title *Al-Amin* (the trustworthy). Prophet Muhammad, Abu Bakr, and Umar (R.A.A.) all worked as workers in the deposit-taking industry.[13]

This has served as the industry's starting point. Baytul-maal (the public treasury) performed fewer tasks than contemporary banks.[14] The reason for this is that economic and commercial activities back then were less sophisticated and complex than they are now. In addition to funding public projects, the *baytul-maal* also manages and distributes *Zakah*, *Jizyyah*, *Kharaj*, ransom payments made on behalf of war prisoners, as well as other high-value assets like silver, gold, agricultural products, etc.[15] *Baytul Maal* distributed allowances to the orphaned, the widowed, the poor, and the kin of those who lost their lives during the holy wars.

As soon as Umar bin Khaab assumed the role of caliph, he instituted *sakk* (Plural of Sukuk, Islamic Bonds), which he reportedly issued and signed. The terms "*sakk*" and "legal instrument" are used interchangeably in the works of *Shari'ah*, the Islamic Law by ***Abdur Rahman I. Doi*** and A Dictionary of Modern Written Arabic by Hans Wehr. That was the first time a cheque had ever been written in the history of banking. The practice persisted without interest during the Abbasid caliphate (750–900 CE). For their services in managing current accounts and issuing *sakk* to the

[11] For example, the first transaction of Murabahah is drawn from the practice of the Prophet with one of his companions.
[12] Suratul Al-Baqarah [Q2 vs 275-279]
[13] Ahmed, H. 'Islamic banking and Shari'ah compliance: a product development perspective'. *Journal of Islamic finance.*, (2014) *3*(2), 15-29
[14] Ibid.
[15] Ibid.

clients, the bankers only demanded a fee of roughly one dirham per dinar. Some registers used in the modern banking system have their roots in the traditional Islamic banking methods, including, but not limited to, trade or trafficking from *tafriq,* purchase from the bay, purchase from *ishtara*, and tariff from *ta'rifah*.[16]

III HISTORY AND EVOLUTION OF ISLAMIC BANK

A) GLOBALLY

Numerous studies have been conducted on the emergence and growth of Islamic banking worldwide, particularly in Nigeria. The majority of the studies focus on topics that are important to them, such as the development of Islamic banking in sub-Saharan Africa, awareness of Islamic banking, perceptions of and use for Islamic banking products, aspects that affect the uptake of Islamic banking, difficulties faced by Islamic banks, and the effectiveness of Islamic banks.

Both in Muslim-majority and non-Muslim nations, Islamic banking has experienced widespread acceptance and a significant number of successes. Following the liberation of Islamic nations from European colonial masters, a quest for Shari'ah-compliant financial institutions and products has enhanced this trend.[17] As reported by the Islamic Financial Services Board (IFSB), as of 2015, the IFSB's total assets were worth $1.88 trillion in USD.[18] Given this, it's no secret that Islamic banks exist in numerous nations that are not Muslim, and this was achieved due to the creation of opportunities for the banks' services (Islamic banks) in these countries. In the study conducted by Nasib,[19] he submitted that Islamic banking has developed to the point where it is currently practiced across several Muslim and non-Muslim nations, including the countries that follow: Bahamas, Algeria, Albania, Bahrain, Bangladesh, Brunei, Dubai, Djibouti, Egypt, Iran, Iraq, Pakistan, Guinea, Malaysia, Mauritania, Morocco, Niger, North Cyprus, Oman, Tobago, Palestine,

[16] Abdul Mannan, Muhammad, *Islamic Economics: Theory and Practice*. (Britania: The Islamic Academy, Cambridge, 1986)

[17] Haniffa, R. and Hudaib, M. 'Islamic finance: From sacred intentions to secular goals', *Journal of Islamic Accounting and Business Research*, (2010), Vol. 1 No. 2, pp. 85-91.

[18] Islamic Financial Services Board (IFSB) 'Islamic financial services industry stability report', (2016), available at: http://www.ifsb.org/docs/IFSI%20Stability%20Report%202016%20(final).pdf (accessed 23 December 2017).

[19] Nasib, H. 'Islamic Finance – A Global Proposition'. *Capco Institute Bulletin,* (2008) 26 June

Qatar, Senegal, Saudi Arabia, Sri Lanka, Sudan, Trinidad and Tobago, Turkey UAE, Abu Dhabi. Also, in the work of Ariff,[20] he reported that in 1978, the Islamic Finance House, or Islamic Banking System, was founded in Luxembourg. In addition, Islamic Bank International of Denmark has locations in Melbourne, Australia, and Copenhagen, Denmark, both of which have a significant Muslim population.[21] In essence, Islamic banks have grown significantly, mostly in Islamic nations, and non-Muslims in these nations are still prohibited from using or accessing Islamic banks' services. Benamraoui[22] noted in his research that the financial liberalization of Algeria had aided in the development of Islamic banking as well as the financial liberalization of the country as a whole.

Similarly, Laldin [23]asserted that the government supported the growth of Islamic finance in Malaysia by using open sources such as books, data, reports, presentations, and conference papers. He made this claim in his other studies regarding the growth of Islamic banking in Malaysia. The positions and procedures of the Egyptian government regarding Islamic banks were examined by Mouawad. He explained how the government's use of its power prevented the sector from moving forward. As a result, the Egyptian government has doubts about the characteristics of Islamic banking products, their connections to Islamic organizations, and their potential economic effects. In Turkey in the 1980s and 1990s, Islamic banking did not develop due to similar issues with government support.[24] Wilson also assessed the state of Islamic banking in the Gulf Cooperation Council (GCC) member states. Wilson claims that the GCC countries' stance on Islamic banks was contradictory. While Saudi Arabia and Oman's governments provided only modest support, the governments of Kuwait, Bahrain, the United Arab Emirates, and Qatar significantly contributed to the growth of Islamic banking.[25]

[20] Ariff, M. 'Islamic banking'. *Asian -Pacific Economic Literature*, (1988) 2(2), 46-62.
[21] Ibid.
[22] Abdelhafid Benamraoui, 'Islamic banking: the case of Algeria' *International Journal of Islamic and Middle Eastern Finance and Management*· (June 2008) 1 :113-131
[23] Mohamad Akram Laldin 'Islamic Finance in the UK: Regulation and Challenges'
[24] Sherin Galal Abdullah Mouawad, 'The development of Islamic finance: Egypt as a case study' *Journal of Money Laundering Control* (January 2009) 12(1):74-87
[25] Wilson, R. 'Challenges and opportunities for Islamic banking and finance in the west: The United Kingdom experience'. *Islamic Economic Studies*, (2000) *7*(1).

The basis for modern Islamic banking is that commercial banks are essential, but due to the inherent difficulties brought on by human intervention, a different type of banking system had to be developed. This system relies on the idea of *Mudarabah,* which includes sharing profits and losses.[26] Based on this idea, Uzair supported a banking system without interest in some of his writings.[27] Significant turning points in Islamic banking's development were facilitated by institutional involvement, as evidenced by illustrious conferences and initiatives. The Conference of the Finance Ministers of the Islamic Countries in Karachi in 1970, the First International Conference on Islamic Economics in Mecca in 1976, and the International Economic Conference in London in 1977 all had a big influence. These occasions made it easier to put theoretical ideas into practice, which led to the founding of the first bank that did not charge interest.[28]

Notably, the experiences of Myt Gamit in Egypt in 1963 led to the first modern Islamic banking experiments, which were then carried out in Dubai in 1975.[29] An innovative savings bank with profit-sharing was the result of Ahmad Elnaggar's pioneering work in Egypt. Five fully Islamic banks are present in London, demonstrating the success of Islamic banking outside of Arab countries. Additionally, more than 250 Islamic banks (including 90 institutions in the Middle East) conduct business globally, from China to the United States, through their Islamic subsidiaries located in the United Kingdom, Germany, Switzerland, and Luxembourg.[30] The Islamic Banker's conservative estimates from October 2008 indicated that the overall value of all Islamic financial assets worldwide had surpassed $500 billion. In its four years of operation, the Islamic Bank of Britain has drawn in more than 40,000 clients, whereas HSBC Amanah, the Islamic finance arm, has been providing institutional clients with business finance services in London for ten years.[31] Unlike traditional financial institutions, none of the Islamic financial institutions collapsed and needed government recapitalization, according to Wilson, because the process of a government

[26] Uzair, M, *An outline of interest less banking*. (Raihan Publications, 1955).
[27] Ibid .
[28] Haniffa, R., & Hudaib, M. 'Islamic finance: from sacred intentions to secular goals?' *Journal of Islamic Accounting and Business Research*. (2010).
[29] Ahmad Alharbi, 'Development of the Islamic Banking System' *Journal of Islamic Banking and Finance (*June 2015), Vol. 3, No. 1, pp. 12-25
[30] Eze, I. and Chiejina, A. 'Furore over Islamic Banking in Nigeria'. (2011) In file:/24733- furore over- Islamic banking- in-nigeria.htm
[31] Karbhari, Y., Naser, K., & Shahin, Z. 'Problems and challenges facing the Islamic banking system in the west: The case of the UK'. *Thunderbird International Business Review*, (2004). 46(5), 521-543.

bailout ultimately proved to be a burden on already overburdened taxpayers. According to reports, the Islamic banks adopted a traditional banking model, relying on deposits for funding rather than borrowing from wholesale markets.[32]

B) NIGERIA

Islamic finance first became popular in Nigeria in the 19th century, just before Sheikh Usman Dan Fodio's uprising and the subsequent rise to power of the Sokoto Caliphate. During that time, financial practices resembling modern Islamic finance were practiced.[33] In 1903, the caliphate was destroyed after colonial forces intervened and took control of the region. Nigeria attempted to set up an Islamic banking system in 1961, along with other Muslim nations, after gaining independence from Britain in 1960. In Lagos, a bank known as the Muslim Bank of West Africa was established in the 1970s.[34]

However, Islamic banking became problematic during the 1980s, at which point wealthy Nigerians who were members of Muslim groups sought financing that was in keeping with their faith[35] This is consistent with Wilson's observation that the growth of Islamic banking in the Gulf Cooperation Council (GCC) states was aided by those who came from the bottom up. An Islamic banking network was started by this group of actors. Inter-segment devices such as campaigns, sermons, Islamic conferences, and media publications were used to pique the interest of other actors in the network they were building.[36] One of the most well-known conferences was the 1985 International Conference on Islamic Economics, which was organized by Usman Danfodio University in Sokoto in collaboration with other universities. Islamic banking was made known to the attendees of the event. The network included numerous Muslim organizations in Nigeria as well as academics and

[32] Wilson, R. 'The development of Islamic finance in the GCC'. Working Paper, Kuwait Programme on Development, Governance and Globalisation in the Gulf States,(2013) 19.

[33] Mustafa, D. A., & Idris, M. 'The contributions of Islamic economic institutions to modern Nigeria'. *Journal of Islam in Nigeria*, (2015). *1*(1), 36-58.

[34] Orisankoko, A. S. 'The Propagation Of Non-Interest Banking In Nigeria: An Appraisal Of The Ideological Risk'. *Journal of Islamic Banking & Finance*, (2012) *29*(1).

[35] Faye, I., Triki, T., & Kangoye, T. 'The Islamic finance promises: evidence from Africa'. *Review of Development Finance*, (2013). *3*(3), 136-151.

[36] Sa'id, H. 'Exploring the development of Islamic banking in Nigeria using an actor-network theory perspective'. *Journal of Islamic Accounting and Business Research*, (2020) *11*(5), 1083-1099.

Muslim religious organizations. However, Islamic banking was not yet covered by Nigerian government or banking legislation, which thus hampered its expansion and success.

Nigeria is an oil-producing nation that has the biggest crude oil reserves in Africa and one of the biggest economies in Africa, but the real economy has been growing slowly, and about 53.5% of Nigerians live below the poverty line.[37] Islamic banking started to be seen by the Nigerian government as a means of eradicating poverty. As a result, the government finally acknowledged the legitimacy of Islamic banking in 1991 shortly after it passed the BOFI Decree.[38] The Structural Adjustment Program's liberalization and regulatory measures to boost the economy led to a rise in the number of banks and other financial institutions, which in turn prompted the passing of the Decree.[39] The Decree's goal was to make the financial industry stronger. It makes it possible for profit-and-loss-sharing banks to be established, which opened the door for the development of Islamic financial institutions.

As a result, Nigeria is now able to participate in Islamic banking, strengthening the network. According to the BOFI Decree, a profit-and-loss sharing bank conducts investment or commercial banking business while maintaining profit and loss sharing accounts.[40] After the banking regulations were changed, banks as well as other financial companies in Nigeria had to be registered and mobilized into the actor-network. Islamic banking had already been made available by Habib Bank. In 1992, the CBN approved the bank's application for a license, and in 1996, Habib Bank started offering non-interest banking services. Numerous Muslims opened accounts with the bank. The expansion of Islamic banking can be viewed as a network of relationships between various human and non-human actors. Consequently, both living and non-living, including the CBN, Jaiz International Bank, Nigeria's Muslims, and other religious faiths, Nigeria's banking

[37] World Bank. *Nigeria Bi-Annual Economic Update, April 2017: Fragile Recovery*. (World Bank, 2017). .
[38] CBN, *Shariah Governance of Islamic Financial Institutions (IFIS): An Analysis of the Central Bank of Nigeria (CBN) Regulatory Guidelines* (CBN: Nigeria,2017),
[39] Ibid.
[40] BANKS AND OTHER FINANCIAL INSTITUTIONS ACT, 1991

legislation, and Nigeria's government, were immersed in the development of the Islamic banking network in Nigeria.[41]

To launch an all-encompassing Islamic bank, several wealthy and educated Muslims founded Jaiz International Bank Plc.[42] The company applied to the Nigerian Stock Exchange (NSE) and raised NGN2.5 billion through an IPO in order to satisfy the Central Bank of Nigeria's (CBN) minimum capital base requirement of NGN2 billion. In 2004, Jaiz International Bank submitted an application to the CBN for a banking license following the initial public offering.[43] In 2005, the license was essentially approved. The CBN started to reform the banking industry, and all Nigerian banks were given the option of increasing the amount of their capital to NGN25 billion by the end of 2005 or merging with other financial institutions in order to comply with the new capital requirements, which put a halt to the establishment of the bank.[44]

The sole Islamic bank's approval was consequently subject to it satisfying the new capital requirement. There were no banks to come to Jaiz International Bank's aid at that time. The Zamfara State government, on the other hand, provided some assistance to Jaiz Bank. The first Nigerian state to officially enshrine *Shari'ah* was Zamfara in 1999. Halal Islamic Bank was established by the Zamfara state government in accordance with *Shari'ah*. The Zamfara state government joined the network as a result of the merger of Halal Islamic Bank and Jaiz International Bank, which raised the required capital and strengthened the bank. The task of raising NGN25 billion in capital, however, remained difficult.[45]

Our analysis indicates that after the year 2000, the Nigerian government assumed the primary role in forming the Islamic finance network. In order to strengthen the model, the government took

[41] Orisankoko, A. S. 'The Propagation Of Non-Interest Banking In Nigeria: An Appraisal Of The Ideological Risk'. *Journal of Islamic Banking & Finance*, (2012) *29*(1).

[42] Mustafa, D. A., & Idris, M. 'The contributions of Islamic economic institutions to modern Nigeria'. *Journal of Islam in Nigeria*, (2015)*1*(1), 36-58.

[43] Jaiz Bank. 'Jaiz Bank 5 Years Milestone'. Available at: https://www.jaizbankplc.com/wire/jaiz-bank-5-years-milestone/ Accessed 9 September 2020.

[44] Ibid.

[45] Unegbu, V. E., & Onuoha, U. D. 'Awareness and use of Islamic banking in Nigeria'. *Oman Chapter of Arabian Journal of Business and Management Review*, (2013) *34*(981), 1-20. Sa'id, H. 'Exploring the development of Islamic banking in Nigeria using an actor-network theory perspective'. *Journal of Islamic Accounting and Business Research*, (2020) *11*(5), 1083-1099

several actions. For instance, the CBN sent a delegation to Malaysia in 2004 to observe the country's Islamic banking system in operation. The CBN deputy governor served as the delegation's leader. Nigeria's 2005 admission into the Islamic Development Bank (IDB), which made the IDB an actor, strengthened the government's commitment to the expansion of the Islamic finance network. The non-interest Finance Working Group was established in 2009 with the assistance of several new participants, including Enhancing Financial Innovation and Access (EFInA, 2009).[46] The EFInA initiative may be attributed to the widespread acceptance of financial inclusion as a tool for advancing economic development because Islamic finance was recognized as a tactic that would help to increase financial inclusion.[47] Due to its interest in promoting financial inclusion and Islamic finance's ability to provide credit to people with lower and middle incomes, which would support the growth of Nigeria's real economy, the International Finance Corporation (IFC), a second foreign actor, joined the network. Furthermore, it was thought that Islamic finance could assist the country in luring the crucial foreign direct investment needed to develop its infrastructure.

EFInA's enrollment and mobilization into the network is explained by the fact that, according to a 2008 survey on financial inclusion in Nigeria, 53% of Nigerian adults do not use financial services. Among the parties that EFInA brought together were the Nigeria Deposit Insurance Corporation (NDIC), National Insurance Commission (NAICOM), Pension Commission (PENCOM), Federal Inland Revenue, Security and Exchange Commission (SEC), Debt Management Office (DMO), Central Bank of Nigeria (CBN), and other market players interested in providing Islamic financial products. These participants helped identify and address market and regulatory obstacles that prevented non-interest banking from succeeding. The group was successful because it had established several rules.[48]

Analysis revealed that after the CBN became a full member of the IFSB in January 2009, more advancements were made. In March of the same year, the CBN Banking Supervision Department published a draft framework for the control and oversight of non-interest banking and requested

[46] EFInA (Enhancing Financial Innovation and Access). Access to financial services in Nigeria 2008 survey: key findings. (2009)
[47] Ibid.
[48] Ibid.

input from interested parties.[49] 2010 saw enormous success for Islamic banking networks. The CBN established a non-interest banking division at the start of the year and unveiled a new banking framework that permitted non-interest banks to operate with capital bases of NGN10 billion for national banks and NGN5 billion for regional banks under special licences. This discovery corresponds to the discoveries made by Al Nasser and Muhammad in that it shows that the Malaysian government gave Islamic banking in that country strong support.[50] After the CBN made changes to the regulations governing specialized banks, Jaiz International Bank obtained the extra funding necessary from institutional and individual investors before applying for a regional license as Jaiz Bank Plc. In December 2011, the CBN authorized Jaiz Bank Plc to function in the region as an officially recognized non-interest bank. The simultaneous provision of non-interest banking services was authorized for Stanbic IBTC Bank Plc.[51]

Nigeria, a nation with a diverse population with respect to religion and ethnicity, is seeing growth in the Islamic financial services network. However, a number of organizations, particularly Christians and their associations, are fighting back against the network by questioning the CBN's decision to permit Islamic banking. Due to the CBN Governor's Muslim faith, a number of organizations pointed to a religious divide. One argument against the CBN was that it lacked the authority to alter banking regulations because only the Nigerian National Assembly had that authority.[52] Some people challenged the CBN in court.

Despite all the criticism, the Islamic banking network grew stronger, and more inter-segment devices were encouraged for both Muslims and non-Muslims through articles published in numerous newspapers, advertisements in the local media, and posts on social media outlining the benefits of Islamic banking and enlisting them in the network. Islamic banking is an interest-free banking system that adheres to Islamic economic and legal concepts, for instance, and was made

[49] CBN, Shariah Governance of Islamic Financial Institutions (IFIS): An Analysis of the Central Bank of Nigeria (CBN) Regulatory Guidelines (2017).

[50] Abdullah Saif Al Nasser, S., Datin, & Muhammed, J. 'Introduction to history of Islamic banking in Malaysia'. *Humanomics,* (2013). *29*(2), 80-87

[51] Dauda, M. 'Legal framework for Islamic banking and finance in Nigeria'. *Electronic Journal of Islamic and Middle Eastern Law (EJIMEL),* (2013). *1*(7), 160-170.

[52] Sa'id, H. 'Exploring the development of Islamic banking in Nigeria using an actor-network theory perspective'. *Journal of Islamic Accounting and Business Research*, (2020). *11*(5), 1083-1099.

known to Nigerians in one article as being accessible to anyone not interested in paying interest; it was not just for Muslims.[53] Other articles emphasized how common Islamic banking is in other nations, including the United Kingdom.[54] On January 6, 2012, Jaiz Bank Plc opened three branches: two in Nigeria's northern states of Kano and Kaduna, and one in Abuja, the country's capital. Jaiz Bank Plc offers non-interest banking in accordance with the teachings of Islam, and on the advice of the Islamic Bank of Bangladeshi Limited (IDB), a bank shareholder, it collaborates with that institution for technical and managerial support.[55]

In the years that followed, Jaiz Bank Plc raised additional funds, and eventually it received a national license that allowed it to conduct business throughout Nigeria. Islamic banking is now widespread in Nigeria thanks to the availability of Islamic financial instruments from a large number of banks and other financial institutions, as well as participation from the public and the government.[56] According to the Jaiz Bank Plc website, there are more than 26,000 shareholders who own the bank, both Muslims and non-Muslims. From NGN12 billion in 2012 to approximately NGN62 billion in 2017, financing assets made up the majority of the bank's balance sheet, which also increased.[57]

IV MISCONCEPTIONS

A recent research investigated the claim of discrimination against Islamic Banks in Nigeria and the result shows that the introduction of the Islamic banking system in Nigeria as an alternative to the known conventional banks witnessed myriads of controversies, criticism and condemnation especially from the non-Muslims in Nigeria on the ground that it was just a means to Islamize

[53] The Daily Trust Newspaper. Islamic banking open to all, not only Muslims – Jaiz Bank. (2018, January 12). Available at: https://www.pressreader.com/nigeria/daily-trust/20180112/281496459237263 Accessed 9 September 2020.

[54] Muneeza, A., Nurul Atiqah Nik Yusuf, N., & Hassan, R. 'The possibility of application of salam in Malaysian Islamic banking system'. *Humanomics*, (2011). *27*(2), 138-147.

[55] Sa'id, H. 'Exploring the development of Islamic banking in Nigeria using an actor-network theory perspective'. *Journal of Islamic Accounting and Business Research*, (2020). *11*(5), 1083-1099

[56] Muniesa, F., Millo, Y., & Callon, M. 'An introduction to market devices'. *The sociological review*, (2007). *55*(2_suppl), 1-12.

[57] Jaiz Bank. 'Jaiz Bank 5 Years Milestone'. (2017). Available at: https://www.jaizbankplc.com/wire/jaiz-bank-5-years-milestone/ Accessed 9 September 2020.

Nigeria and perpetrate terrorism.[58] Below are some other misconceptions about the system in Nigeria.

A) ISLAMIC BANKING IS ALL ABOUT NON-INTEREST

One typical misunderstanding with regard to Islamic banking is that it only emphasizes its absence on interest. But the ideology of Islam includes a thorough framework for both social and economic justice. It covers topics like property rights, reward structures, resource distribution, economic freedom, decision-making, and the function of the government. Some Western bankers contend that the flow of savings into investments would decrease in the absence of interest. This viewpoint results from the distinction between the "interest rate" and the "return rate," as those terms are used in the Islamic world. God allowed trade but outlawed *Riba* (interest), in accordance to Islamic principles. Therefore, rather than a rate of return that is not known, like profit, it represents the established or predetermined return associated with savings or transactions that are prohibited.

Modern economists have put forth various justifications for the inclusion of interest. One argument holds that interest compensates the debtor for the temporary loss of capital utilization by acting as a reward for saving. It is crucial to understand that Islamic banking, on the other hand, operates according to distinct principles and methods that aim to uphold fair and morally upright financial practices.[59]

B) ISLAMIC BANKING IS JUST A SCAM

The perception among Muslims as a whole that implementing the principles of Islamic banking only benefits the wealthy and is merely another way for banks to increase profits through the growth of deposits was influenced by these kinds of accounts. Recent studies have revealed that Islamic financial institutions face numerous challenges, including a lack of experts in Islamic banking and uncertainty in accounting principles relating to revenue realization, disclosures of accounting information, accounting bases, valuation, and revenue and expense matching to Islamic

[58] Zubair, A.A. & Muhammed, A.Y., 'Legal Examination of Discrimination of Islamic Banks in Nigeria: Distinguishing Between Hearsay and Admissible Evidence' *Kampala International University Law Journal (KIULJ)* [2024] Vol. 6, Issue 2, P.77

[59] Samir, S. 'Islamic finance and its use in Azerbaijan'. *The Caucasus & Globalization*, (2008) *2*(3), 76-85.

banks.[60]Because of this, and as was correctly pointed out, the outcomes of Islamic banking schemes might not be sufficiently defined with regard to the precise profit and loss shares attributable to depositors.

Islamic financial institutions have also come under fire because it has been noted that the *Mudarabah* principle has not been upheld in a proper way. Sait, Siraj, Lim, and Hilary noted that while *Mudarabah* placed a strong emphasis on risk sharing, these banks were more focused on profit-sharing and generally attempted to minimize risk. Additionally, they observed that these banks were disregarding the intent of the law creating the banks in the Muslim community in favour of strictly adhering to Shari'ah. The majority of financial institutions that offer Islamic banking services are largely owned by non-Muslims, which raises questions about the reliability of these organizations and the caliber of their services. It has also been argued that Islamic banking does little for the general populace. In addition, one Malaysian bank that provided Islamic investment funds discovered that these funds were primarily invested in the gaming industry and that the managers in charge of these funds were not Muslims, according to the study by Sait, Siraj, and Lim, Hilary.[61]

The essential values of justice and fairness are the cornerstones of the Islamic economic system. The ban on interest and the emphasis on equitable sharing of profits and losses (PLS) are just a few examples of how these principles have specific implications. Iqbal et al. assert that these monetary agreements are consistent with the Islamic view that rights and obligations are applied broadly. By preventing the abuse of power by the rich and powerful and making sure that both parties benefit in every transaction, they seek to strike a balance between individual interests and those of society.[62] Islamic scholars place a strong emphasis on social justice and welfare as essential outcomes for any society. These ideas are consistent with religious teachings as well as Islamic economics, which historically upholds *Shari'ah* laws that govern all aspects of daily life,

[60] Aishat Abdul-Qadir Zubair, 'An Analysis of Dispute Resolution Mechanisms in the Islamic Banking and Finance Industry in Malaysia' *Jurnal Hukum Novelty* (2020) Volume 11, Number 2.

[61] Lim, H., & Sait, S. 'Accidental Islamic feminism: dialogical approaches to Muslim women's inheritance rights'. In *Feminist Perspectives on Land Law* (2007) (pp. 261-286). Routledge-Cavendish.

[62] Iqbal, Z., & Mirakhor, A. *An introduction to Islamic finance: Theory and practice* Vol. 687 (John Wiley & Sons, 2011).

such as the economic and cultural spheres.[63] Muslims are bound by a comprehensive set of laws known as *Shari'ah*, which includes Islamic teachings. This code of conduct applies to every facet of Muslims' lives. Each person has a responsibility to faithfully follow these teachings and principles.[64] The majority of religions promote social justice by emphasizing morality and spiritual wisdom.[65]

In this regard, a close reading of the verses from the *Quran* leaves one in no doubt that justice is integral to the basic outlook and philosophy of Islam, within or beyond the *Shari'ah* itself and that the religion supports the idea of universal human rights, which Muslims must uphold at all times.[66] Similarly, the claim that unity, trusteeship, and accountability - the three central concepts of Islam- support the ethical teachings of Islam.[67] Prominent Islamic scholars have consistently argued that society has a duty to make sure that everyone's basic needs are met, regardless of the specifics of financial systems and their results. Efforts should be made to reduce glaring differences in income and wealth at the same time. This shared responsibility highlights the significance of addressing social and economic injustices in the context of Islamic principles.[68]

There is a strong emotional underpinning to the relationship between Islamic financial principles and the text of the Holy Quran. This is made clear in Chapter 67, Verse 2, where it is stated that Allah created life and death as a means of testing people, and that one of those tests is to forbid doing certain things. Quran emphasizes that the prohibition of interest, gambling, and *gharar* are three examples of financial contexts in which this testing of emotions is particularly pertinent. These behaviors are thought to be in opposition to the pursuit of social justice and equality, which are central principles in Islamic teachings.[69]

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[63] Ibid.

[64] Kamla, R. 'Critical insights into contemporary Islamic accounting'. *Critical perspectives on accounting*, (2009) *20*(8), 921-932.

[65] El-Gamal, M. A. *Islamic finance: Law, economics, and practice*. (Cambridge University Press,2006).

[66] Kamali, M. H. A shari 'ah analysis of issues in Islamic leasing'. *Journal of King Abdulaziz University: Islamic Economics*, (2007) *20*(1).

[67] Nasar, R. M., Naseef, M., & Battour, M. أثر أخلاقيات التسويق على ولإ الزبون في شركات الاتصالات الخلوية الفلسطينية: إطار مفاهيمي. (2020)

[68] Ahmed, H. 'Islamic banking and Shari'ah compliance: a product development perspective'. *Journal of Islamic finance.*, (2014) *3*(2), 15-29.

[69] Kuran, T. *Islam and Mammon: The economic predicaments of Islamism*. (Princeton University Press, 2004).

A Muslim's life could benefit in several ways from an economic system built on Islamic principles. It provides a framework that can encourage the achievement of social-economic objectives, advance social justice and equality for all people, and aid in the eradication of poverty. Islam provides a unique alternative framework for allocating resources within society as a whole because its tenets differ significantly from those of both socialism and capitalism.[70] In this context, the notion that Allah is the true "owner" of the entire universe and that humans are merely beneficiaries or temporary custodians of any property they may possess is especially significant.[71]

Islamic economic principles have been around for a long time, which helped open the floodgates for modern Islamic financial institutions to appear in the 1970s. By banning interest and promoting lending on the basis of profit and loss sharing (PLS), financial institutions aimed to set themselves apart from traditional banks. The early successes of this industry can be attributed in part to the goals of Muslims living in minority settings, such as the United Kingdom, who wanted to save and invest money in accordance with their religious principles and ideals.[72]

The original concept of Islamic finance rejects the use of profit as the only criterion, viewing it as harmful to society in contrast to traditional "Western" notions of financial performance. Instead, the sector abides by normative standards that take socioeconomic factors into account and are consistent with *Shari'ah*. These measures seek to aid in the accomplishment of development objectives and act as standards for assessing performance in the context of Islamic finance.[73] According to mutually agreed-upon terms, the borrower and lender share investment risks as part of Islamic finance's risk-sharing structure. Without relying on promises or collateral, gains or losses are split equally between the two parties in this arrangement.[74]

Profit and loss sharing (PLS) agreements are regarded by some authors as Islamic banking's defining feature. As a result, discussions on Islamic finance frequently presuppose that PLS is

[70] Quran 4:29
[71] Kamla, R., Gallhofer, S., & Haslam, J 'Islam, nature and accounting: Islamic principles and accounting for the environment'. In *Accounting forum* . (2006, September). (Vol. 30, No. 3, pp. 245-265). Taylor & Francis.
[72] Iqbal, Z. 'Islamic financial systems. *Finance and development*, (1997). *34*, 42-45.
[73] Lewis, M. K., & Algaoud, L. M. 'Islamic banking'. In *Islamic Banking*. (Edward Elgar Publishing, 2001).
[74] Haron, S., & Ahmad, N. 'The effects of conventional interest rates and rate of profit on funds deposited with Islamic banking system in Malaysia'. *International Journal of Islamic Financial Services*, (2000) *1*(4), 1-7.

theoretically superior to traditional interest-based banking. This viewpoint supports the idea that PLS arrangements are more in keeping with Islamic codes of conduct and may provide benefits when used within the framework of Islamic financing mode.[75] It is important to keep in mind that the traditional focus of Islamic banks on promoting societal equality and harmony could be used as the basis for the creation of a "Model Islamic Bank" when considering the emotional aspects of institutional activities. Over time, this model envisions a shift towards financing that relies on participatory share of profits and losses (PLS) arrangements taking precedence. Such an evolution would reflect the inherent principles of Islamic finance, emphasizing fairness and collective well-being.[76] In this context, the guiding principles necessitate banks to uphold ethical behavior and make ethical investments. Simultaneously, they are expected to treat their employees and customers with fairness, refraining from any form of discrimination based on age, culture, gender, or religion. When it comes to the reach of Islamic financial systems, it is argued that their social responsibility extends beyond the education and service of Muslims. Instead, it encompasses the entire society, recognizing the universal rights of individuals to employment and investment opportunities as essential needs.[77] By adhering to this philosophy, Islamic banks have the potential to attract substantial support, driven by emotions and rooted in the trust of non-Islamic and secular customers. No matter their level of religiosity, many people place a high value on moral values. Hence, by embodying these principles in their operations, Islamic banks can appeal to a wider customer base and garner their trust.[78]

Islamic consumers have been aggressively targeted in response to rising standards of living and disposable income, and efforts to appeal to their religious inclinations as part of marketing efforts have become more pronounced.[79] Several distinct factors, along with the general direction of the market, have promoted the growth of faith-based banks in the United Kingdom. The largest of

[75] Safiullah, M 'Superiority of conventional banks & Islamic banks of Bangladesh: a comparative study'. *International Journal of Economics and Finance*, (2010). *2*(3), 199-207.

[76] Siddiqi, M. N., & Banking, L. I. 'Towards a grass-roots based Islamic finance for all'. In Eighth Annual International Conference of Larisa Islamic Banking (Keynote address). Los Angeles, CA. (2001, June).

[77] Housby, E. *Islamic financial services in the United Kingdom*. (Edinburgh University Press, 2011).

[78] Suhartanto, D., Dean, D., Ismail, T. A. T., & Sundari, R. 'Mobile banking adoption in Islamic banks: Integrating TAM model and religiosity-intention model'. *Journal of Islamic Marketing*, (2020). *11*(6), 1405-1418.

[79] Alam, I., & Seifzadeh, P. 'Marketing Islamic financial services: A review, critique, and agenda for future research'. *Journal of Risk and Financial Management*, (2020). *13*(1), 12.

these are as follows: (i) the 2.8 million Muslims who were counted as part of the most recent census (2011); (ii) approval from British authorities; (iii) the continued inflow of large sums of money from Middle Eastern nations; (iv) London's status as the nation's major international economic hub; and (v) the country's advanced educational system.[80] Many of the international financial institutions that are now taking advantage of these opportunities in the UK have long been active in the Middle Eastern and South Asian markets, allowing them to gain knowledge and experience in the rules and regulations of Islamic finance. The knowledge and experience in Islamic mode of financing that have been gained have been used as a base for growth outside of nations with a majority of Muslims. This expansion first became apparent through the installation of "Islamic windows" in the UK and other regions. Within traditional banks, these specialized divisions provided basic lending and savings products based on Islamic principles.[81] On a larger scale, the expansion of Islamic finance outside of environments that are primarily Muslim is consistent with the current belief that, in reality, it is not necessary for finance professionals and clients to fully internalize the tenets of Islam to cooperate with or use *Shari'ah*-compliant financial services. This viewpoint makes comparisons to charitable organizations where people can give and take part without necessarily sharing the same core values.[82]

C) ISLAMIZATION OF NIGERIA

In recent times, Islamic banking in Nigeria has faced many impediments which have influenced the successful establishment and management of banks given some of the religious colorations and cultural differences. The arguments of some non-Muslims on the position that Islamic banking was introduced to Nigeria to Islamize the country are no longer news. Many non-Muslims thought that some fundamentalist religious groups had funded and financed some Islamic banks in Nigeria. Some argued that calling an Islamic bank an interest-free bank is more suitable if the aim of this bank is not to Islamize Nigeria. In addition, proponents of Islamic banking contend that a bank can

[80] Adamek, J. 'Nadzór religijny nad muzułmańskimi instytucjami finansowymi'. *Bezpieczny Bank*, (2017). (2 (67), 38-51.

[81] Wilson, R. 'Challenges and opportunities for Islamic banking and finance in the west: The United Kingdom experience'. *Islamic Economic Studies*, (2000) *7*(1).

[82] Yasmin, S., Ghafran, C., & Haslam, J. 'Centre-staging beneficiaries in charity accountability: Insights from an Islamic post-secular perspective'. *Critical Perspectives on Accounting*, (2021) *75*, 102167.

be interest-free if it operates in accordance with Islamic law. However, a core Islamic banking concern is the mode of operation or instruments, not the only interest. For instance, investing in any business activity that is not Islamic is prohibited, such as the sale of alcoholic drinks.[83]

Non-Muslims think that by creating a Shari'ah Council to oversee Sharia banking activities, the CBN is attempting to impose Shari'ah on Nigerians of all faiths. Mallam Sanusi was accused of being the backbone of the conversion of Nigeria to Islam. On the contrary, Sanusi declares that the CBN is not establishing or promoting Islamic banks but rather granting licenses to the sector to conduct Islamic banking.[84]

Furthermore, it is a known fact that people other than Muslims have put forth multiple attempts to thwart the emergence of Islamic financial services in Nigeria, giving a few unfair justifications based on feelings that are purely emotional and sentimental.[85] The definition of an interest-free financial institution varies between two important pieces of legislation, the Non-Interest Financial Institutions (NIFI) Guidelines 2011 and the Banks and Other Financial Institutions Act (BOFIA) 1991. Additionally, the opposition alleged that the CBN's composition violated the federal character principle and that non-Muslims were discriminated against in using the services of Islamic banks.[86] Similar charges have been levelled against the growth of Islamic finance as an integral component of a plan to Islamize the world. It is impressive how many rational justifications have been offered to disprove every charge levelled by the adversaries.[87]

Following the appointment of the CBN governor as chairman of the International Islamic Liquidity Management Corporation (IILM), a multilateral organization created to provide *Shari'ah*-compliant liquidity-management instruments for Islamic financial institutions, the Nigerian chapter of the Christian Association of Nigeria (CAN) announced a new and improved commitment to preventing the growth of Islamic banking in the nation. According to This Day

[83] This is where Shari'ah compliance comes in. There is strict adherence to this principle in terms of the businesses they venture in and finance.
[84] Sanusi, L.S. '16th annual CBN seminar for financial market journalists in Adamawa state' in Boh, M. (2011) Vanguard**.** 'Nigeria: CBN to extend Islamic banking to other financial sectors. Oct. 3.
[85] The case of Sunday Vs CBN Governor even though the case was struck out for lack of Locus standi.
[86] Olayemi, A. A. M. 'The legality of Islamic banking in Nigeria: A critical approach'. (2011). *Available at SSRN 1941010*.
[87] Ibid.

Live, CAN demanded that Nigeria remove its membership from the IILM and that the CBN governor resign from his leadership. Nevertheless, despite these desperate tactics, some non-Muslims continue to use Islamic banking. Due to some inherently advantageous factors that encourage patronage even from non-Muslims, the campaign against Islamic banking in Nigeria appears to be less effective. Examining all of the traits and factors that sway non-Muslims in Nigeria to use or adopt Islamic banking is crucial given the rising demand for Islamic banking services.[88]

V CONCLUSION

Islamic finance has grown in popularity among Muslims as well as non-Muslim nations in recent decades, Islamic nations that are not Muslim have also adopted Islamic finance as a trend. Islamic banking needs the cooperation of all parties, regardless of their faith, because it is not discriminatory by nature. However, the rise of Islamic banking is seriously threatened due to the persistent opposition of a portion of the Nigerian population. Nigeria will not benefit from a boycott of such a vitally developing Islamic financial system, especially at this time when the country is working hard to become Africa's largest and most powerful International Finance Corporation (IFC). Everyone should therefore take steps to identify the phobia's root sources, weigh any adverse effects that may have followed, and suggest countermeasures. It is hereby recommended that there should be enhanced public education campaigns to ensure that people are well informed of the workings of an Islamic Bank. This will apart from building the investors' confidence also help in achieving greater financial inclusion for all. In the same vein, the need for enhanced regulatory clarity cannot be overemphasized. The Lawmakers need to further work on the possibility of coming up with a dedicated Act for the operations and regulations of this very important sector of the larger Financial landscape. Finally, but most importantly, there is the need to have a very proactive stakeholder engagement to ensure that everybody is on the same page and the misconceptions are properly cleared and dealt with once and for all.

[88] The Daily Trust Newspaper. 'Islamic banking open to all, not only Muslims – Jaiz Bank'. (2018, January 12) Available at: https://www.pressreader.com/nigeria/daily-trust/20180112/281496459237263 Accessed 9 September 2020.

GREEN FINANCING AND POLICY SUPPORT FOR SUSTAINABLE TOURISM INITIATIVES IN NIGERIA

Lateefat Adeola Bello* and Clementina Chika Okeke**

Abstract

Sustainable tourism plays a vital role in addressing pressing global challenges such as climate change, biodiversity loss, and economic instability. This paper explores the importance of green financing and supportive policies in fostering sustainable tourism initiatives. It highlights mechanisms like green bonds, biodiversity-focused investments, and policy incentives that are instrumental in minimising the ecological footprint of tourism while simultaneously generating economic advantages. The research identifies key challenges faced by the sector, including limited access to financing, inconsistencies in regulatory frameworks, and gaps in technical expertise. The paper proposes strategic solutions to address these issues that foster collaboration among various stakeholders, including governments, financial institutions, and local communities. The study focuses on how financial strategies can turn tourism obstacles into opportunities for environmental and social advancement. It emphasises the need for eco-friendly tourism practices that not only yield profits but also deliver social benefits. By assessing funding mechanisms and policy frameworks that engage diverse stakeholders, the research aims to promote authentic sustainability. The investigation reveals that innovative financing and supportive policies can enhance sustainable development initiatives by addressing both environmental and social dimensions. However, it also underscores challenges such as policy fragmentation and the risk of "greenwashing." The paper advocates for synchronised global policies and active local engagement to overcome these hurdles. Ultimately, it suggests actionable recommendations for enhancing green financing and adaptive policies that facilitate collaboration among all parties involved. This cohesive approach aims to transition the tourism sector from merely sustainable to regenerative, fostering ecosystem vitality and community development. The proposed model is adaptable across various industries striving for economic growth alongside environmental sustainability.

Keywords: Sustainable Tourism, Sustainability, Green Financing, Policy Incentive, Environmental Sustainability

1.1 INTRODUCTION

The economic activity that aims to minimise climate change risks and/or maximise environmental benefits is called "green financing." One example of green financing is when a business obtains a loan to renovate its portfolio of homes with more energy-efficient features, such as solar panels. Home residents are reducing their energy use and electricity costs as a result. The premise that green finance benefits everyone is further supported by this.[1] The long-term objective of Green finance is to create a flow of capital toward initiatives that support a more resilient and sustainable economy. Addressing environmental issues such as climate change is part of the tourism sector's sustainability initiative[2]. Green financing is increasingly recognised as a vital mechanism for promoting sustainable tourism initiatives. The idea of sustainable tourism combines sociocultural, economic, and environmental aspects to make sure that tourism growth satisfies current demands without endangering the capacity of future generations to satisfy their own. It strongly emphasises maximising economic gains and promoting social equity while minimising adverse effects on the environment and local traditions. By providing the necessary funding and support, green financing helps tourism destinations achieve Green Destination status, which emphasises environmental sustainability and responsible tourism practices.[3] Green financing and policy support are, therefore, crucial for advancing sustainable tourism initiatives, particularly in the context of growing environmental concerns and the need for economic resilience.[4] This article explores how

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[1] Yaseen Eiweida, "Green Finance Can Address the Increasing Demand for Sustainable Tourism' (2024). Available at <https://www.solimarinternational.com/how-green-finance-can-address-the-increasing-demand-for-sustainable-tourism/ > accessed 3 March 2025

[2] Kwilinski, A., Lyulyov, O., & Pimonenko, T. (2025). The role of green finance in attaining environmental sustainability within a country's ESG performance. Journal of Innovation & Knowledge, 10(2). Available at <https://www.sciencedirect.com/science/article/pii/S2444569X25000241>

[3] M.H. Rahman et-al, Corporate Social Responsibility and Green Financing Behavior in Bangladesh: Towards Sustainable Tourism. Innovation and Green Development (2024). 3(3), 100133. Available https://doi.org/10.1016/j.igd.2024.100133 Accessed November 2024

[4] M.Fu, S. Huang and S. Ahmed. "Assessing the Impact of Green Finance on Sustainable Tourism Development in China. Heliyon , (2024), 10(10), e31099. Retrieved from https://doi.org/10.1016/j.heliyon.2024.e31099 2 March 2025

these financial mechanisms can facilitate sustainable practices within the tourism sector, promoting both environmental conservation and socio-economic benefits.

Tourism accounts for a significant share of the world's GDP and ranks as one of the economically important sectors, especially in poor countries[5]. However, the dependence of this sector on natural resources, energy, and infrastructure has raised certain ethical and social concerns about this industry. Hence, the concept of Sustainable tourism. This notion tries to emphasise the need for sound environmental practices meant to protect natural resources and improve the living conditions of people in the region.[6]. This opinion was supported by recent research conducted in Ghana, which found that good management boosts the economy while preserving the environment and culture. According to the study, tourism needs to be environmentally, socially, and economically viable to be deemed sustainable.[7]

The travel and tourism sector alone is responsible for about 8%[8] Of the total greenhouse gas emissions contributing to climate change, therefore, the solution to the pressing challenge of climate change lies at the heart of sustainable tourism development. It is in this context that sustainable tourism is seen as an opportunity to turn problems into solutions, that is, harnessing the power of the environment and society to make positive change. Coastal risk management may include activities like the mangrove Protection projects, also seen as the best investments in supporting local coastal communities.[9] A key driver of this transformation is the integration of green policies and finance, which unlocks funding and enables sustainable practices. Policy support complements green financing by creating a robust regulatory framework that incentivises sustainable practices and encourages public-private partnerships. Governments and international

[5] World Travel and Tourism Council (2024), Travel & Tourism Economic Impact Research (EIR). Available at https://wttc.org/research/economic-impact Accessed 21 April 2025

[6] A.N. Khatib, "Climate Change and Travel: Harmonizing to Abate Impact. Current Infectious Disease Reports(2023). 25(4), 77. Available at https://doi.org/10.1007/s11908-023-00799-4 Retried 29 January 2025

[7] J. Albrecht & M. Haid. "Sustainable Eco-Tourism in Ghana: An assessment of Environmental and Economic Impacts. Journal of Global Research in Education and Social Science.(2022) Retrieved from "https://academicjournals.org/journal/JGRP/article-full-text/BC08B1169646 Accessed 29 January 2025

[8] Khatib, A. N. (2023). Climate Change and Travel: Harmonizing to Abate Impact. Current Infectious Disease Reports, 25(4), 77. https://doi.org/10.1007/s11908-023-00799-4 Retrieved 20 April 2025

[9] A. Torres-Delgado, & F. López Palomeque, F. "The growth and spread of the concept of sustainable tourism: The contribution of institutional initiatives to tourism policy (2012). Tourism Management Perspectives, 4, 1-10. https://doi.org/10.1016/j.tmp.2012.05.001

organisations play a pivotal role in unlocking finance, accelerating green investments, and fostering innovation in tourism infrastructure. These efforts not only address environmental challenges but also enhance the sector's competitiveness and resilience against economic disruptions.[10]. Thus, Financial strategies can effectively transform obstacles in the tourism sector into opportunities for environmental and social advancement by focusing on sustainable practices, community engagement, and strategic financial planning.[11] This paper examines the connection between governmental support for sustainable tourism and green funding for tourism growth. It aims to identify the gaps that exist, the procedures that would be adequate, and how stakeholders may position themselves to help the tourism industry accomplish the goals of the global development agenda. The uniqueness of the study lies in its integrative technique, which focuses on real-world applications while incorporating many facets of economics, policy, and case studies. For greater equality and sustainability of territory through tourism, governments, businesses, and inhabitants must work together.

1.2 IMPORTANCE OF GREEN FINANCING IN MITIGATING ENVIRONMENTAL IMPACTS

To lessen the tourism industry's environmental impact, green funding is essential. Destinations can embrace sustainable practices that safeguard biodiversity and natural resources by allocating the required funds for environmentally beneficial projects and developing and implementing eco-friendly tourism guidelines that help minimise environmental impacts while promoting responsible travel. This ensures the conservation of natural and cultural heritage sites, which is crucial for long-term sustainability. Improving infrastructure, such as accessibility and visitor facilities, supports sustainable tourism growth. This not only enhances the tourist experience but also preserves the environment by managing visitor flow and reducing strain on local resources.

[10] Yaseen Eiweida. "How Green Finance Can Address the Increasing Demand for Sustainable Tourism' (2024) Available at <https://www.solimarinternational.com/how-green-finance-can-address-the-increasing-demand-for-sustainable-tourism/ > accessed 3 March 2025

[11] Bozena Radzewicz-Bak et-al (2024) Preparing Financial Sectors for a Green Future: Managing Risks and Securing Sustainable Finance, International Monetary Fund "https://www.elibrary.imf.org/view/journals/087/2024/002/087.2024.issue-002-en.xml

A substantial rise in green finance is expected as future generations, including tourists, hold environmental values and expect financial institutions to provide those services. As a result, green financing plays a critical role in reducing carbon emissions to foster the development of tourism. Additionally, green funding promotes the adoption of sustainable practices and technologies by tourism operators, strengthening their ability to withstand the effects of climate change.[12] Green financing is becoming a crucial instrument for promoting long-term success in the tourism industry as more locations realise how important sustainability is in drawing eco-aware tourists. [13]Green financing covers a range of tools, such as grants, green bonds, and public-private partnerships, which are briefly discussed below:

1. Eco-Friendly Infrastructure: Green financing is a powerful tool for building eco-friendly infrastructure within the tourism sector. It helps fund projects like energy-efficient hotels, renewable energy systems, and advanced waste management facilities. For instance, green bonds have been instrumental in supporting initiatives such as restoring degraded ecosystems and rehabilitating natural habitats impacted by tourism. These developments not only reduce environmental harm but also enhance the appeal of destinations by preserving their natural beauty[14].
2. Carbon Emission Reduction -Tourism often leaves a significant carbon footprint, but financial mechanisms like carbon credits and climate-smart investments are changing the game. These tools channel funding into low-carbon technologies, such as solar-powered accommodations or electric transport options, and support nature-based solutions like reforestation. By reducing emissions, these investments allow tourism to grow in harmony with the environment, ensuring that destinations remain viable for future generations.[15]
3. Circular Economy Integration -Green financing also encourages the adoption of circular economy principles in tourism. This approach emphasises resource efficiency, recycling,

[12] S.Xu , & H. Wang |. "The role of green financing to enhance tourism growth by mitigating carbon emission in China". Environmental Science and Pollution Research International, 30(21), 59470. https://doi.org/10.1007/s11356-023-26089-z

[13] Ibid

[14] UNWTO Investment Forums, "Investment Readiness for Green Finance Mechanisms initiative, Green Investments for Sustainable Tourism" available at< https://www.unwto.org/green-investments-for-sustainable-tourism> Accessed 3 March 2025

[15] Ibid

and sustainable consumption practices. For example, many eco-lodges now use renewable energy, recycle waste materials, and harvest rainwater to minimise their environmental impact. These practices not only conserve resources but also inspire visitors to adopt greener lifestyles themselves.[16]

Green bonds are fixed-income financial products designed especially to generate capital for environmentally beneficial initiatives, including sustainable land use, energy efficiency, and renewable energy. They give investors the chance to profit from their investments while simultaneously supporting eco-friendly projects.[17] Grants are sums of money given to certain projects by governments, nonprofit organisations, or international organisations with no obligation of repayment. Small and medium-sized businesses (SMES) in the tourism industry can benefit greatly from grants, which enable them to adopt sustainable practices without taking on debt. Public-Private Partnerships (PPPS): These cooperative arrangements between private businesses and governmental organisations have the potential to raise funds for environmentally friendly travel projects. PPPS finances and carries out projects that benefit local communities and the environment by utilising the assets of both sectors.[18]

Similarly, Biodiversity Bonds are Financial instruments aimed at conserving natural habitats and promoting ecotourism. While Debt-for-Nature Swaps are Agreements that redirect debt repayments toward conservation projects, exemplified by Seychelles' initiative. This is an example of a government-restructured debt in exchange for pledges to protect marine habitats. This creative financing strategy showed how green financing can result in real environmental benefits by easing financial strain and enabling large investments in conservation initiatives.ICarbon Offset Program: Mechanisms that allow tourists and businesses to compensate for their carbon emissions by investing in renewable energy or reforestation projects.

[16] Ibid

[17] GINN (2025) What you need to know about impact investing , Available at <https://thegiin.org/publication/post/about-impact-investing> Accessed 21 April 2025

[18] Melody Kazel (2024) Public-Private Partnerships (PPPs): Definition, How They Work, and Examples Available at https://www.investopedia.com/terms/p/public-private-partnerships.asp Accessed 21 April 2025

1.3 CHALLENGES FACED BY TOURISM'S SMALL AND MEDIUM ENTERPRISES (SMES) IN ACCESSING GREEN FINANCE

Accessing green finance is a major obstacle for tourism SMES, which can limit their capacity to implement sustainable practices and support environmental preservation. High interest rates, difficult application procedures, and strict collateral requirements are some of these difficulties, which make it difficult to obtain the money required for environmentally friendly projects. [19]The high interest rates linked to green loans are one of the main challenges. High borrowing rates are a financial burden for many small and medium-sized tourism businesses, which may discourage them from making investments in environmentally friendly practices and technologies. This problem is exacerbated by the fact that small and medium-sized tourism businesses sometimes lack sufficient collateral or financial records, which makes them less appealing to lenders than larger companies.[20].

Another major obstacle is the intricate application procedures for green funding. For smaller enterprises that might not have the administrative resources or expertise, the documentation requirements and the complexities of qualifying for green financing can be too much to handle[21]. Additionally, SMES in the tourism industry may find collateral requirements especially difficult to meet. To obtain loans, financial institutions frequently demand significant collateral[22], which many small businesses are unable to supply. This keeps them from getting the money they need and feeds the loop of underfunding sustainable practices. Several tactics can be used to overcome

[19] IGI Global."Challenges and Sustainability of Green Finance in the Tourism Industry(2024)." Retrieved from https://www.igi-global.com/chapter/challenges-and-sustainability-of-green-finance-in-the-tourism-industry/333975 accessed 16 Janauary 2025

[20] F. MFairoz and J.A.T., C. (2020). Barriers to Implementing Green Business Practices of Small and Medium Scale Enterprises in the Tourism Industry." International Journal of Research in Social Sciences. Retrieved from https://rsisinternational.org/journals/ijriss/Digital-Library/volume-2-issue-10/186-192.pdf Accessed 30 Janauary 2025

[21] SSRN. (2022). The Challenges For SMEs In Green Finance Initiatives Adoption. Retrieved from https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4232126_code3949121&mirid=1 accessed 28 January 2026

[22] Thein, E. E., Niigata, A., & Inaba, K. (2024). Concentrated bank market and SMEs' collateral issues: A study of the firms of developing Asian countries. Journal of Economic Structures, 13(1), 1-19. https://doi.org/10.1186/s40008-024-00338-x

these issues.[23] The following are some ways that financial institutions could make green financing more accessible and appealing to smaller businesses:

i. By creating customised loan products with more flexible terms and lower interest rates, financial institutions could make green financing more appealing to these businesses;

ii. By making the application process for green loans easier, businesses can apply more successfully;

iii. By providing training in business skills (strategic planning) and financial literacy (credit management, budgeting), financial institutions can improve their capacity to handle public monies[24]. Workshops on sustainability certification and resource-sharing platforms can help collaborative ecosystems headed by governments, NGOs, and tourism organisations increase access to green funding (such as grants and low-interest loans). 30–40% more funding requests are successful when SMEs are trained to highlight the financial and environmental advantages.[25] These initiatives support global sustainability objectives.

iv. IV Governments, financial institutions, and travel agencies working together can establish enabling environments that make green finance more accessible. Projects such as the Sustainable Island Mauritius initiative show how strategic alliances can improve funding conditions for SMES and increase knowledge sharing. Stakeholders may enable tourist SMES to more easily access green finance and implement sustainable practices that benefit their companies and the environment by removing these obstacles through focused interventions[26].

1.4 IMPORTANCE OF REGULATORY CONSISTENCY AND CAPACITY BUILDING

[23] Ibid

[24] OECD/INFE. (2021). Financial literacy and SMEs: A global perspective. https://www.oecd.org/financial/education

[25] UNWTO. (2023). Tourism for SDGs: Pathways to innovation. https://www.unwto.org

[26] Opage , Partnership for Action on the Green Economy,UN Environment Program Finance Initiative. Greening the SMEs: Improving SME Access to Green Finance in Mauritius. Available at <https://www.un-page.org/static/c3fdfcc685936cbd52bfcfecabe32c8e/greening-the-smes-improving-sme-access-to-green-finance-in-mauritius.pdf >

Regulatory consistency is crucial for creating a stable environment that encourages investment in sustainable tourism. Clear and coherent policies help build investor confidence and ensure that all stakeholders understand their roles and responsibilities. However, many regions face challenges related to technical capacity gaps among stakeholders, including government agencies, local communities, and private sector actors. Addressing these gaps is essential for effective policy implementation.

Capacity-building initiatives can enhance the skills and knowledge of stakeholders involved in sustainable tourism. This includes training programs focused on best practices in environmental management, financial literacy regarding green financing options, and community engagement strategies. By equipping stakeholders with the necessary tools and understanding, regulatory frameworks can be more effectively executed, leading to better outcomes for both the environment and local economies.[27]

1.5 POLICY SUPPORT FOR SUSTAINABLE TOURISM INITIATIVES

Effective policy frameworks are crucial for promoting green financing in the tourism sector. Governments can implement various policies that incentivise investments in sustainable practices, including tax breaks, grants, and low-interest loans. The United Nations World Tourism Organisation (UNWTO) highlighted the significance of a supportive investment policy framework to accelerate green investments in tourism, which not only attracts funding but also aligns tourism development with broader environmental objectives. [28]

Policy support is essential for fostering sustainable tourism initiatives. Various frameworks have been developed to guide investments in this sector. The UNWTO has established guidelines.[29] That promote sustainable tourism investments, emphasising the need for integrated approaches that align tourism development with environmental sustainability and social equity. These guidelines encourage stakeholders to adopt practices that contribute to the Sustainable Development Goals

[27] UNWTO Investment Guidelines (2021). UNWTO Investment Guidelines – Enabling Frameworks for Tourism Investment. Retrieved from https://www.e-unwto.org/doi/book/10.18111/9789284422685
[28] Yaseen Eiweida (2024) Ibid.
[29] UN Tourism Investment Guidelines: Enabling Frameworks for Tourism Investment Enabling Frameworks for Tourism Investment Drivers and Challenges Shaping Investments in TourismUN Tourism Investment Guidelines <https://www.unwto.org/investment/un-tourism-investment-guidelines-SA1>

(SDGS), particularly in areas such as climate action, responsible consumption, and biodiversity conservation. The Components of Effective Policy Frameworks are: Financial incentives, such as tax credits, rebates, grants, and low-interest loans, are critical for attracting investments in renewable energy and sustainable tourism practices. Governments must create comprehensive regulatory frameworks that support green financing initiatives. This includes establishing clear guidelines and standards for sustainable practices within the tourism industry.

(2) Policies should be designed to ensure that tourism development aligns with national and international sustainability goals, including commitments to reduce carbon emissions and enhance biodiversity.

(3) Continuous assessment of policy effectiveness is necessary to adapt to changing market conditions and stakeholder needs. This includes evaluating the impact of incentives on sustainable practices within the tourism sector[30].

Effective policy frameworks are vital for facilitating green financing in tourism. By implementing supportive policies and creating an enabling environment for sustainable investments, governments can drive significant progress toward sustainable tourism development that benefits both the economy and the environment. The following are some examples of green financing initiatives in the tourism sector. Seychelles' Debt-for-Nature Swap, in collaboration with The Nature Conservancy, Seychelles reallocated $27 million of its national debt to fund marine conservation projects, establishing marine parks and supporting eco-tourism. This initiative has set a precedent for using innovative financial instruments to achieve sustainability goals.[31].

[30] Leo Bently and Homaira Bint Halim (2024)Evaluating the Long-Term Impact of Sustainable Tourism Practices on Local Communities and Natural Resources in Developing Countries Integrated Journal for Research in Arts and Humanities 4(3):136-141 Retrieved from https://www.researchgate.net/publication/374328855_Overview_of_Sustainable_Development_and_Promotion_in_Tourism accessed 20 April 2025

[31] The Commonwealth Case Study (2020)Case Study: Innovative Financing – Debt for Conservation Swap, Seychelles' Conservation and Climate Adaptation Trust and the Blue Bonds Plan, Seychelles (on-going) Retrieved https://thecommonwealth.org/case-study/case-study-innovative-financing-debt-conservation-swap-seychelles- conservation-and

Copenhagen's Copen Pay Initiative[32] Copenhagen introduced a program rewarding tourists for sustainable behaviours, such as cycling and visiting cultural sites. Supported by Wonderful Copenhagen, this initiative reduced the city's environmental impact while enhancing its appeal as a green destination.

Colombia's Biodiversity Bond: BBVA's issuance of biodiversity bonds in Colombia funded projects focused on habitat restoration and eco-tourism, demonstrating the role of financial instruments in achieving dual economic and environmental objectives [33].

1.6 INNOVATIVE FINANCIAL INSTRUMENTS

Innovative technologies play a pivotal role in supporting green financing in the tourism sector, facilitating sustainable practices, and enhancing the overall efficiency of operations.[34]. The introduction of innovative financial instruments is vital for promoting sustainable tourism. Green bonds, for example, are increasingly being used to fund environmentally friendly projects within the tourism sector. These bonds attract investors who are interested in supporting sustainability while generating returns. Additionally, blended finance models that combine public and private funding can help mitigate risks associated with sustainable investments.[35] By leveraging these instruments, tourism companies can secure the necessary capital to implement green initiatives. There are also important technologies that contribute to green financing initiatives in tourism. Some of these are:

i. **Block chain Technology -** Blockchain technology offers transparency and security in financial transactions, making it an effective tool for green financing. By enabling traceability of funds, blockchain can ensure that investments are directed towards genuine, sustainable projects. This technology can also facilitate the issuance of green bonds by providing a clear record of how

[32] Adrienne Murray Nielsen (2024)Copenhagen's new 'CopenPay' scheme rewards tourists – but does it actually work? Retrieved from https://www.bbc.com/travel/article/20240730-copenhagens-new-copenpay-scheme-rewards-tourists-but-does-it-actually-work > Accessed 20 April 2025

[33] International Finance Corporation IFC World Bank Group (2023)BBVA Colombia and IFC issue the world's first biodiversity bond in the financial sector. Retrieved from https://www.ifc.org/en/pressroom/2024/28298 Accessed 20 April 2025

[34] ResearchGate (2024). Green Innovations in the Tourism Sector - ResearchGate. Retrieved from https://www.researchgate.net/publication/324112362_Green_Innovations_in_the_Tourism_Sector

[35] Ibid

funds are utilised, thereby increasing investor confidence in the sustainability claims of tourism projects. The use of blockchain can help establish a more robust market for green investments by ensuring accountability and reducing the risk of "greenwashing,"[36] where projects falsely claim environmental benefits.[37]

ii. **Information and Communication Technology (ICT)**- ICT-based solutions are essential for promoting sustainable tourism practices. These technologies can streamline operations, improve resource management, and enhance customer engagement. For instance, digital platforms can be used to promote eco-friendly accommodations and activities, allowing travellers to make informed choices that support sustainability. Additionally, ICT tools can facilitate data collection on environmental impacts, helping businesses measure their sustainability performance and attract green financing by demonstrating their commitment to environmental stewardship.[38].

iii. Smart Technologies -The integration of smart technologies, such as the Internet of Things (IoT) and artificial intelligence (AI), can significantly enhance the sustainability of tourism operations. Smart meters and sensors can monitor energy and water usage in real time, allowing businesses to optimise resource consumption and reduce waste. AI-driven analytics can help operators identify areas for improvement in their sustainability practices, making it easier to secure funding for green initiatives by showcasing potential cost savings and environmental benefits.[39].

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[36] The practice of exaggerating or misrepresenting a financial product, initiative, or investment's environmental benefits in order to draw in sustainability-minded investors is known as "greenwashing." This happens in the green bond market when issuers designate bonds as "green" without following reliable sustainability standards, directing money towards non-green endeavours, or not being open and honest about how revenues are being used. This lessens the climate impact of green finance and erodes public confidence in it.

[37] Ezekiel Udeh et-al (2024)The role of Blockchain technology in enhancing transparency and trust in green finance markets, Finance & Accounting Research Journal 6(6):825-850. Available at https://www.researchgate.net/publication/381234210_The_role_of_Blockchain_technology_in_enhancing_transparency_and_trust_in_green_finance_markets Accessed 20 April 2025

[38] M. Choiril Azwan(2024)The Role of Information and Communication Technology in Tourism Industry Development: Trends and Future Prospects. Available at https://nawalaeducation.com/index.php/JT/article/download/513/565/2268 Accessed 20 April 2025

[39] Tamara Gajic et -al (2024) Innovative Approaches in Hotel Management: Integrating Artificial Intelligence (AI) and the Internet of Things (IoT) to Enhance Operational Efficiency and Sustainability, Sustainability 2024, 16(17), 7279; https://doi.org/10.3390/su16177279 https://www.researchgate.net/publication/383360896_Innovative_Approaches_in_Hotel_Management_Integrating_Artificial_Intelligence_AI_and_the_Internet_of_Things_IoT_to_Enhance_Operational_Efficiency_and_Sustainability Accessed 20 April 2025

iv. **Renewable Energy Technologies** -Investments in renewable energy sources, such as solar panels, wind turbines, and geothermal systems, are crucial for reducing the carbon footprint of tourism operations. By adopting these technologies, tourism businesses can not only lower their operational costs but also enhance their appeal to environmentally conscious travellers. Green financing mechanisms can support these investments by providing access to low-interest loans or grants specifically designated for renewable energy projects.[40].

v. Green Building Technologies - Innovative construction materials and techniques that emphasise energy efficiency and sustainability are vital for developing eco-friendly tourism facilities. Technologies such as modular construction, sustainable materials sourcing, and energy-efficient design principles contribute to lower environmental impacts during both the construction and operation phases. Green financing options can incentivise developers to adopt these practices by offering favourable terms for projects that meet specific sustainability criteria.[41].

The devastating effect of climate change, reflective in the growing incidences of wild fires ongoing rise in sea level, air and water pollution, desertification, oil spills, deforestation, industrial and solid waste, flooding, erosion, and extremely unfavourable weather conditions are all major signs that long-term funding for capital formation through the Nigeria's debt capital markets is required to address these issues which often than not leads to and /or property damage, and/or infrastructure deterioration. These problems result in poor health, internal migration, property destruction, deteriorating infrastructure, and negative impacts on numerous economic sectors. Nigeria has, in line with global efforts to finance sustainability, launched a Green Bond Market Development Program to encourage institutional and private investment in environmentally beneficial projects, such as infrastructure and renewable energy. Given the special role that green bonds play in funding climate and environmental projects, FMDQ Securities Exchange ("FMDQ"), Climate Bonds Initiative ("CBI"), and Financial Sector Deepening, Africa ("FSD Africa") formalised a

[40] ASERS Publishing (2024). Green Finance Supports Sustainable Environment: Empirical Approach - ASERS Publishing. Retrieved from https://journals.aserspublishing.eu/tpref/article/view/8368 accessed 28 Feb, 2025

[41] Rohit Agrawal et al ( )Adoption of green finance and green innovation for achieving circularity: An exploratory review and future directions, GeoScience Frontiers Volume 15 Issue 4 Elsevier.Available at athttps://www.sciencedirect.com/science/article/pii/S1674987123001366 accessed 12 April 2025

partnership in March 2018 through the execution of a Cooperation Agreement to support the growth of the Nigerian green bond market. As a result, the Nigerian Green Bond Market Development Programme was created. Since its official launch in June 2018, the Programme has made impressive progress towards a portion of its strategic goals of developing the corporate green bond market.[42].

By releasing Africa's first sovereign-certified Climate Bond in December 2017, Nigeria created history by raising NGN 10.69 billion, or roughly $29 million at the time, to finance afforestation and renewable energy projects 711[43]. Nigeria's early leadership in green financing was demonstrated by the first off-grid renewable energy plant recognised under Climate Bonds Standards and the first Corporate Green Sukuk in Africa.[44].

To achieve this, Five strategic frameworks were put into place to develop the corporate and non-sovereign green bond market: facilitate the establishment and growth of a green bond market; support the development of green bond guidelines and listing requirements; create a pool of licensed verifiers based in Nigeria to assist issuers; create a pipeline of green investments and facilitate communication with potential investors; and support broader debt capital market reforms that affect Nigeria's non-government bond market.[45]

In addition, Nigeria's expanding information and communications technology (ICT) sector and the integration of renewable energy efforts offer a basis for green finance innovations that could boost travel. Infrastructure for sustainable tourism, for instance, can be improved by spending money on waste management and energy-efficient buildings.[46]Although the direct use of these creative green finance tools in the travel and tourism industry is still quite small, it is nonetheless encouraging because Green funding, which allocates funds to ecologically friendly projects, is a

[42] Ibid

[43] FSD Africa Impact, Green Bonds: <A Vital Solution to Alleviate Nigeria's Energy Crisis. Available at <https://fsdafrica.org/impact-stories/green-bonds-a-vital-solution-to-alleviate-nigerias-energy-crisis/ >Accessed 20 April 2025

[44] Ibid

[45] FsdAfrica Green Bond Impact Report Approved, Green Bond In Nigeria, The Nigerian Green Bond Market Development Programme Impact Report 2018-2021, Available at <https://fmdqgroup.com/greenexchange/wp-content/uploads/2022/04/Impact-Report-on-the-Nigerian-Green-Bond-Market.pdf > Accessed 22 April 2025

[46] International Trade Administration, Country Commercial Guides, Nigeria - Information and Communications Technology.(2023) Retrieved from <https://www.trade.gov/country-commercial-guides/nigeria-information-and-communications-technology > accessed 4 March 2025

vital tool for combating climate change. It connects the demands for climate mitigation with possibilities for investments in clean technologies, resilient infrastructure, and renewable energy, all of which are key points in the development of tourism infrastructure and investment initiatives. Ultimately, Nigeria's development of its green bond market will improve its tourism landscape as well as investment opportunities for would-be investors in the tourism industry.

1.7 CONCLUSION

The future of sustainable tourism lies in transitioning from sustainability to regeneration, where the industry not only minimises its ecological footprint but actively contributes to restoring natural environments and enhancing community well-being. This vision entails creating a tourism model that prioritises ecological health, social equity, and economic resilience. By embracing regenerative principles, the tourism sector can become a catalyst for positive change, ensuring that destinations thrive while preserving their cultural and environmental heritage. The adoption of innovative technologies is essential for advancing green financing in the tourism sector. By leveraging blockchain, ICT solutions, smart technologies, renewable energy systems, and green building practices, stakeholders can enhance their sustainability efforts while attracting private investment. These technologies not only improve operational efficiency but also provide a compelling case for securing funding aimed at promoting environmentally responsible tourism practices.

The research highlighted the critical role of green financing and policy support in fostering sustainable tourism initiatives. Findings indicate that while there is a growing recognition of the need for sustainable practices within the tourism sector, significant challenges remain in accessing green finance, ensuring regulatory consistency, and implementing effective policies. The transition from traditional sustainable tourism to a more holistic regenerative approach is essential for creating long-term benefits for both communities and ecosystems. This paper bridges these gaps by offering a holistic view of how financing and policies can work together to overcome barriers and foster sustainable tourism.

1.7.1 Findings

i. Innovative financial instruments, such as green bonds and public-private partnerships, are crucial for funding sustainable tourism projects. However, many tourism SMES face barriers such as high interest rates and complex application processes that hinder their access to these funds.

ii. Effective policy frameworks are necessary to guide sustainable practices in tourism. Regulatory consistency and capacity building among stakeholders are vital for the successful implementation of these policies.

iii. The concept of regenerative tourism goes beyond merely minimising negative impacts; it aims to restore and enhance ecosystems and communities. This shift requires a collaborative approach that includes all stakeholders in the tourism ecosystem.

1.7.2 Recommendations

(3) Develop clear, consistent regulations that promote sustainable practices while simplifying access to green financing for SMES.

(4) Implement capacity-building programs to equip local communities and businesses with the knowledge and skills needed for sustainable tourism development.

(5) Foster public-private partnerships to leverage resources and expertise in promoting green initiatives.

The future of sustainable tourism lies in transitioning from sustainability to regeneration, where the industry not only minimises its ecological footprint but actively contributes to restoring natural environments and enhancing community well-being. This vision entails creating a tourism model that prioritises ecological health, social equity, and economic resilience. By embracing regenerative principles, the tourism sector can become a catalyst for positive change, ensuring that destinations thrive while preserving their cultural and environmental heritage. Through innovative financing mechanisms, supportive policies, and a commitment to regenerative practices, we can build a more sustainable future for the tourism industry that benefits both people and the planet.

INTERNATIONAL ABDUCTION OF CHILDREN BY PARENTS: A CALL FOR LEGISLATIVE ACTION IN NIGERIA

Oluwanike Olufunke Oguntokun*

Abstract

Marriages could break down irretrievably. The eventual residence of the children of broken marriages is usually contested. A major concern in divorce proceedings is the custody of children. Custody is usually awarded to either party on agreed terms, with the court giving attention to the best interest of the children. Parties are not denied access to the children except the court believes such access would not be in the best interest of the children. Thus, the situation presented by the abduction of children by one party is one of utter disregard for law and order and an infringement on the inherent rights of the other party. This paper examined the Hague Convention on Civil Aspects of International Child Abduction 1980, which is the international legal framework put in place to protect and ensure that children abducted by a parent and taken to another country are returned to their habitual residence. The paper also considered the United States of America and Australia, which have enacted local legislation that deals with the international abduction of children by parents. The paper identified that Nigeria has not acceded to the Hague Convention. It was also discovered that, unlike the United States of America and Australia, Nigeria has no specific legislation that deals with the international abduction of children by parents. Suggestions that Nigeria should take legislative action by enacting local legislation to address international abduction of children by parents and ratifying and domesticating the Hague Convention.

***Keywords*:** Children, Custody, Hague Convention, International Abduction, Legislation, Parents

1. INTRODUCTION

Abduction is the unlawful taking or detention, by force, fraud, or persuasion, of a person, a wife, a child, or a ward, from the possession, custody, or control of the person legally entitled thereto.[2] However, the context of the term in this paper refers to the unlawful, forceful taking of a child by a parent from the possession of the other parent. Child abduction may be committed both domestically and internationally. In 2014, there was a case of international parental kidnapping when a father of a 9-year- old boy named Billy Hanson did not return him to Pennsylvania after spending the summer with his father in Seattle. Billy's mother allowed him to visit his father, Jeff

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[2] DS Garland and LS McGehee, 'The American and English Encyclopedia of Law' (Northport, Thompson, 1896)

Hanson, for vacation. Later, the father started to send messages to the mother that Billy would not be returning to her, thereby violating an order of court. The mother mobilised the police, who went in search of the father, Jeff Hanson. He was arrested in New Zealand and detained on immigration charges.[3] One major fact that was reported to have aided his arrest is international cooperation.[4] When the abduction involves taking the child to a foreign country, it is referred to as international abduction which is the focus of this paper.

It is important to state that the issue of parental abduction is usually predicated on the award of custody following the dissolution of marriage.[5] The bitterness that often accompanies the award of custody has led many parents to abduct the child or children of the marriage against court order. In the case of ***Ojeniran v Ojeniran***[6], the court stated that in determining which of the parties is worthy of custody, the court will resort to determining which of the parties can substantially cater for and sustain the child in terms of financial capacity, education, feeding, physical, social, and mental well-being and other matters that the court considers fit in the circumstance.

There is no gainsaying that Nigeria does not have adequate legislation on the subject of international abduction of children by parents. There is currently no specific legislation on parental abduction in Nigeria. However, the Child's Right Act 2003 (CRA 2003) provides that no child shall be forcefully and illegally removed from his parents or guardian without their prior consent or will.[7] Whoever contravenes this provision shall be convicted and jailed depending on the gravity of the situation.[8] Where the child is taken out of Nigeria, the offender shall be convicted to fifteen years of imprisonment.[9] Where the offender does so with the intention not return the child back to Nigeria, he shall be convicted to twenty years' imprisonment. [10] If the abduction is within Nigeria,

[3] Federal Bureau of Investigation, 'International Parental Kidnapping Case, Partnerships, Publicity Key to 9-YearOld Rescue,' ,News, July 27 2015, < https://www.fbi.gov/news/stories/international-parental-kidnapping-case >(Accessed 06 January, 2025).
[4] Ibid.
[5] Sec 71(1) Matrimonial Causes Act 2004 which urges the court to consider the guardianship, welfare, advancement, education of children other marriage in granting custody to any of the parties to the marriage.
[6] (2018) LPELR-45697(CA) Per Chidi Nwaoma Uwa JCA (Pp 23-28, Paras F-D).
[7] Sec 27(1) Child's Right Act (CRA). 2003.
[8] Sec 27(2) CRA 2003.
[9] Sec 27(2)(a) (i) CRA 2003.
[10] Sec 27(2)(a)(ii) CRA 2003.

the law prescribes seven to ten years imprisonment depending on the circumstances of the abduction as provided under the law.[11]

Despite the provisions of the CRA 2003 against abduction, the law fails to provide for intricacies and legal impediments created by international abduction by parents. The challenge goes beyond the prescription of punishment for offenders. It is more important that procedures to ensure the safe return of the children internationally abducted are provided for. Some nations, like the United States (US), United Kingdom (UK), Canada, and Australia, among others, have taken legislative actions over the years regarding the issue of parental child abduction. Issues relating to jurisdictional approaches to children abducted overseas were addressed in Australia as far back as 1951. For example, under the common law in Australia, a child abducted into the territory of Australia was deemed subject to the laws of Australia and not the law of the territory the child was abducted from.[12] In *Wade v Firns*[13], the Australian court affirmed that where there is an application to return an abducted child, the court may do the following: (i) order that the child be returned to his country (ii) investigate if the issue of custody should be left to the child's country (iii) accept the responsibility of determining custody. Subsequently, around 1976, Australia entered into bi-lateral treaties with Papua New Guinea and New Zealand concerning children abducted from those foreign countries.[14] The said treaty was domesticated under section 68, Family Law Act of Australia. The section provides for conflict of law rules to be followed when dealing with international parental abduction. For example, in the case of ***Brandon v Brandon,***[15] a man and his wife, in 1988, agreed to take their child to the UK in violation of a court order that gave the child to child welfare authorities. Sometime in 1989, the wife relocated to the UK to meet her husband. Subsequently, in 1990, the wife took the child to Australia without her husband's consent. There was an order that she should return the child to the father in the UK, considering that the place has now become their place of habitual residence, pointing out there was an initial wrongful abduction of the said child from Australia. Situations like this lead to a number of jurisdictional challenges.

[11] Sec 27(2)(b)-(c) CRA 2003.
[12] *Kades v. Kades* (1961-62) 35 A.L.J.R. 251; *McKee v. McKee* (1951) A.C. 352.
[13] (1981) FLC 91-106,
[14] Joseph V. Kay 'International Abduction of Children' (1994) 32 *Family and Conciliation Courts Review* 168.
[15] (1991) 14 Fam LR 181.

This paper explains international abduction of children by parents, a child's right to family life and the exception when the issue of custody arises, and why the child's best interests is important. It examines how the "Hague Convention on Civil Aspects of International Child Abduction (Hague Convention) 1980" protects and facilitates the return of children abducted by parents to other countries. The paper also highlights the local legislation in the United States and Australia and the limitation of regulation of international abduction of children by parents in Nigeria. Suggestions on the way forward for Nigeria will be proffered.

2. MEANING OF INTERNATIONAL ABDUCTION OF CHILDREN BY PARENTS

International abduction of children by parents occurs where the interests and the stability of children are interrupted by taking them across international frontiers without the consent of the parents or guardians or an order from a court of competent jurisdiction.[16]It is also described as a parent taking a child or children to another country without the knowledge, authority, or consent of the other parent or against a court order.[17]It means a parent has taken children across international borders without obtaining the consent of the other parent who possesses custody.[18] Premised on this, the major parameters for international abduction of children by parents are the illegal possession and forceful relocation of the children to another jurisdiction other than their place of habitual residence. This usually denies the children the right they have to have a relationship with both of their parents. There are fundamental domestic issues that often lead to international abduction of children by parents. It is apposite to consider the right of a child to family life and the exception provided in the CRA 2003 in Nigeria.

3. CHILD'S RIGHT TO PRIVACY AND FAMILY LIFE IN NIGERIA AND EXCEPTION WHEN CUSTODY ISSUE ARISES

[16] J Wall 'International Child Abduction' (1996) 18 *Liverpool Law Review* 169.

[17] Clinton Anwara and Olabisi Ogunyemi,'Parental Abduction:A Contradistinction of Nigerian Laws and International Practices', https://wwwfrawilliams.com/wp-content/uploads/2023/08/Parental- Abduction-A Contradistinctio-n of Nigerian- Laws –an-d International Practices-pd:text=In %20% Accessed 15 March 2025.

[18] Criminal Justice, 'International Parental Kidnapping and Child Abduction', https://Criminal Justice justice-iresearchnet.com/Criminal- Justice- Process/ Internationa/ aspects and extradition/International Parental Kidnapping and Child Abduction Accessed 15 Marc 2025. See also Nuna Gonzalez Martin, 'International Parental Child Abduction and Mediation'(2015) 15(1) *Family Law Quarterly*, 353-412. https/doi.org/10.1016/j.amdi.2014.09.007,https//www.sciencedirect.com/science/article/pii/S1870465415000112 Accessed 15 March 2025.

The CRA 2003 recognises a child's right to enjoy privacy and family life.[19] These rights are not to be interfered with by even parents, except in the exercise of necessary supervisory and parental control.[20] Every child reserves a right to be adequately maintained by parents [21] Where parents fail to provide maintenance, the child may enforce this right in the Family Court.[22]The law provides that a child may be separated from his parents for the purpose of welfare or education[23] and judicial determination by the court in the best interests of the child.[24] According to Section 14(1)(a) of the CRA 2003, a child may be separated from his parents through education. The other possibility presented in Section 14(1)(b) of the CRA 2003 is the judicial involvement in the separation. Hence, the question is, in what circumstance can a child be separated from his parents by the court? The answer to this is when a parent has petitioned for an order of dissolution of marriage and there are children of the marriage, which would require the court to award custody to either of the parents.

When the court determines the award of custody and access to the child, the general welfare advantage of the child and the wishes of the parents are taken into consideration. [25] Once the court makes an order on custody, it must be legally upheld by the parents who have separated. Where it is not upheld, custody may become illegal and the erring party will be liable and punished appropriately. In a recent report, a Nigerian woman relocated to the UK with two children and changed their names without informing their father. The couple had divorced, and the custody of the two children was granted to the father, while the mother was granted access to the children only twice within a year. On a certain day, the father got to school to take his children home but realised his ex-wife had abducted them to the UK and had changed their names.[26] This kind of situation is becoming more incessant and requires an urgent intervention of the law.

[19] Sec 8 CRA 2003.
[20] Sec 8(3) CRA 2003.
[21] Sec 14 CRA 2003.
[22] Sec 14(2) CRA 2003.
[23] Sec 14(1)(a) CRA 2003.
[24] Sec14(1)(b) CRA 2003.
[25] Sec 69 CRA 2003.
[26] V Duru, 'He Nearly Ran Mad' Nigerian Woman Relocates with Two Kids Without Telling her Husband, Changes Their Names' https://www.legit.ng/people/family-relationship/1531640-ran-mad-nigerian-woman-relocates-2-kids-telling-husband-names/ Accessed 06 January, 2025

4. IMPORTANCE OF THE BEST INTERESTS OF THE CHILD

There are several issues of concern when abduction of children by parents occurs. The major concern of the law is the child's best interests. The court of England stated clearly that delay in resolving any disputes concerning a child will not serve the child's interest.[27] To ensure the abducted child's best interest is upheld, it is pertinent to promptly determine if he should be returned to his habitual residence or not.[28] The court will therefore assume jurisdiction in exceptional cases. In this circumstance, it is advised that a country should not arbitrarily favour its own laws where such laws will not be in the child's interest.[29] In any case, a child's welfare is not *strictu sensu* ensured only in the country of his habitual residence; facts of each case should be considered on its own merits. Under the CRA 2003 in Nigeria, the law is very clear that where the issue of the upbringing of a child is brought before the court, the welfare of the child shall be paramount in any circumstance.[30] The Nigerian law also permits the child to express his wishes and his choice.[31] However, caution should be taken at this point because the ability of the child to make informed decisions based on truth should be a requirement. There are possibilities that the defaulting parent could have inoculated the child with negative perceptions about the other parent. Evidence of this will vitiate and affect the reliability of the wishes of the child, so the court must be careful to rely on it.

Therefore, international abduction of children by parents presents multifarious challenges, which include the cross-border nature of its commission, the challenge of determination of the forum court, and guaranteeing the child's best interest. However, it isr important to examine both the international and domestic legal regimes that may provide solutions to determine the questions that arise from international abduction of children by parents.

5. HAGUE CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION 1980

[27] Re L (Minors) (Wardship: Jurisdiction) CA 1974.
[28] Wall (n 16) 170.
[29] Ibid.
[30] Sec 71 CRA 2003.
[31] Sec 75 CRA 2003.

The 'Hague Convention on Civil Aspects of International Child Abduction' 1980 (Hague Convention) is an international instrument that protects children abducted by a parent to another country and facilitates their return to their home country by strict adherence to international standards. It also ensures the right of access to the children.[32] Consensus exists between states that have ratified the Convention.[33] Contracting parties to the Convention may, between themselves, agree on terms not expressly provided for in the Convention to determine certain questions that may arise from abduction challenges involving the two states.[34] Hence, contracting states ensure that they implement the Convention both in the domestic arena and in relation to other contracting states.[35] The Convention's objectives is to:

i. Return abducted children without any form of delay to their home country.
ii. Ensure that contracting states have mutual respect for the right of custody and access under their respective domestic laws.[36]

The objective two above is suggestive that contracting states must resolve conflict of laws challenges in the choice of the forum court, law, and jurisdiction. For example, if a child is abducted from the Netherlands to the US, the court in the US, while determining the welfare and the child's best interest must also consider the law of the child's habitual residence (Netherlands).

Why is the Convention important? International abduction of children requires concerted efforts by states to ensure that the menace is curbed. The following was declared by the Congress of the US concerning international abduction and the importance of the Hague Convention of 1980:

(1) The challenge of international abduction is inimical to the general welfare of a child.
(2) No one should be granted custody merely because of wrongfully removingl or retaining the child within a foreign state.
(3) International cooperation is imperative to effectively tackle the increasing challenge of international abduction.

[32] Preamble to the "Hague Convention on Civil Aspects of International Child Abduction" (HCCAICA) 1980.
[33] Article 35 HCCAICA 1980.
[34] Article 36 HCCAICA 1980.
[35] Article 2 HCCAICA 1980.
[36] Article 1 HCCAICA 1980.

(4) It provides extensively a modus operandi for handling jurisdictional challenges and issues of international abduction of children.[37]

The law of the habitual residence of the abducted child and not the place where he was taken to is relied on to determine whether or not an international abduction has been committed The Convention provides that the removal of a child is wrong when an order of court granting custody of the child to another is violated.[38] In other words, where a couple are divorced and their union have been duly dissolved and the award of the custody of children is granted, it shall be unlawful for the party that was not awarded the custody of the children to forcefully take over the custody by relocating the children to another jurisdiction. Custody can also be given to a third party other than the father or mother. The court can grant residence order in favour of a person who is not the parent or guardian of the child. The person shall be responsible for the child while the residence order remains in force.[39] Thus, the court of the habitual residence of the child may grant custody to either of the parents, a third party, or an institution.

Furthermore, each contracting state is required to establish a Central Authority that shall be in charge of discharging the duties imposed upon the state under the Convention. Where a state operates a system of government where the component states are autonomous, each autonomous state may be required to establish its own Central Authority and, by domesticating the Convention determine the extent of the powers of such authorities within their respective territories.[40] The functions of the Central Authority include:

a) To detect the exact location of the child that has been internationally abducted;
b) To ensure and prevent the child from being further subjected to any harmful behaviour and also to protect the interest of parties whose right to custody have been breached;
c) To provide measures towards amicable settlement of the issues and deliberate return of the child;
d) To gather information about the background history of such a child for helpful reasons;

[37] James D Gabilino '1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judges.' Washington, D.C., 2015 Federal Judicial Center.
[38] Article 3 HCCAICA
[39] Sec 68(6) CRA 2003.
[40] Article 6-10 HCCAICA.

e) To provide information concerning the law of the state where the child was abducted from and the Convention;

f) To set up of judicial and administrative committees towards resolving the issues of the abduction and returning the child and also facilitating arrangement for such return;

g) Depending on the situation, to facilitate the provision of legal aid and the inclusion of relevant legal personnel in resolving the abduction issues;

h) To provide such administrative structure to facilitate the child's return;

i) Ensure adequate communication between the states regarding how the Convention regulates them.[41]

5.1 PROCEDURE FOR SECURING THE RETURN OF A CHILD UNDER THE HAGUE CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION 1980

Any person who claims that a child has been abducted against his custodial rights may apply to the Central Authority in the territory of the habitual residence of the child to lay such complaints. The application shall contain –

a) Details about the applicant who is in search of an abducted child, identity of the abducted child and the identity of the person who has perpetrated the abduction;

b) The date of birth of the abducted child;

c) Details of legal grounds upon which the applicant seeks the abducted child's return;

d) Other information that may point to where the child is, and any other identifying features of the abductor.

e) A certified copy of any court order or agreement relating to the child, custody or any other relevant document;

f) A statement from the Central Authority or any state agency of the place of habitual residence stating the position of the internal law of the state on international abduction;

g) Other important documents.[42]

[41] Article 7 HCCAICA 1980.
[42] Article 8 HCCAICA 1980.

Once the Central Authority receives the application and the accompanying documents, it will transmit the application without delay to the Central Authority of the contracting state.[43] The Central Authority of the state where the child is taken to shall take steps towards returning the child promptly.[44] As stated earlier, delay is seen as a serious prejudice against the child's welfare and interest. It is expected that the proceeding must be concluded within six weeks from the commencement of the application. Where there is delay, it is mandatory for the state from where the application came to make inquiries and for the foreign state to give reasons for such delay.[45]

To determine the welfare and the interests of the child, the Convention provides that the Central Authority of the place where the child is abducted to may refuse to return the child if it believes that:

a) The applicant or the institution seeking the return of the child had no right to custody at the time the child was abducted or acquiesced to the abduction; or
b) The return is not in the child's best interest.

In ***G (Abduction:Cosent/Discretion),***[46] the Court of Appeal of England said that where a child is abducted within the context of the Hague Convention, it shall take all necessary caution to ensure the immediate return of the child unless there is a justifiable reason not to do so. Such reasons may only include that the return of such a child is not in his or her best interests.[47]

The child may decide he is not returning to his habitual residence, and this decision should be respected by the relevant Authority. However, the child must have attained the age of maturity and can make such a decision. Moreover, the relevant background of the child will be considered in the circumstance.[48]The challenge of returning the child must first be addressed by the Convention before an order for return is made. To achieve this, the Convention provides that to establish if wrongful removal or retention occurred, the relevant judicial and administrative authorities shall

[43] Article 9 HCCAICA 1980.
[44] Article 10 HCCAICA 1980.
[45] Article 11 HCCAICA 1980.
[46] (2021) EWCA Civ 139.
[47] (Supra).
[48] Article 13 HCCAICA 1980.

give consideration to the domestic laws of the state of habitual residence in determining the return.[49] This suggests that if Nigeria becomes a signatory to the Convention (in reality, Nigeria is not a signatory), a contracting state that retains an abducted Nigerian child may request for the laws that govern custody, marriage and matrimonial causes, enforcement of foreign judgment, judgment enforcement rules, and others.

Where abduction is wrongful, the relevant authority handling the abduction shall not determine the right of custody except it is concluded in accordance with the Convention that the child should not be returned.[50] As stated earlier, the state where the child is abducted to may refuse to return the child on the ground of best interests. For example, before Alberta signed the Convention, it refused to return back to South Africa children that were abducted into Alberta because of Apartheid.[51]Thus, the fact that there is a valid grant of custody to the applicant does not mean that he/she is automatically entitled to the return of the child.[52]

The Convention is very extensive in its model for the processes by which an abducted child is returned to his habitual residence with provisions that have utmost regard for the laws of contracting states. States are also permitted to apply any other laws if mutually agreed upon by states concerned in the resolution of international abduction of children by parents. As at December 2024, 101 states have assented to the Convention.[53] Nigeria is not a signatory to the Convention.

5.2 WHAT HAPPENS TO STATES THAT ARE NOT PARTIES TO THE HAGUE CONVENTION?

There are states that are not parties to the Hague Convention.[54] Some factors militate against a peaceful and satisfactory(easy) resolution of issues regarding international parental abduction in

[49] Article 14 HCCAICA 1980.
[50] Article 16 HCCAICA 1980.
[51] Ibid
[52] Article 17 HCCAICA 1980.
[53] M Blitt, 'International Child Abduction' (2019) 44 Law Now 32
[54]These are some of the states that have signed the Hague Convention 1980.-: Former Yugoslav Republic of Macedonia Finland Croatia, Denmark, Czech Republic France (for the whole of the territory of the French Republic), Germany, Greece, Ireland, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, http://www.hcch.net/e/status/abdshte.html#ratifications Accessed 1 May 2023.

states that are not parties to the Hague Convention, for example culture and religion. France has bilateral treaties with certain Muslim nations like Algeria[55] and Morocco. Few European nations have treaties with a number of Muslim nations in the North Africa and Middle East.[56] Most of these Muslim nations depend heavily on sharia law in the conduct of their family law matters. Women under sharia law are normally granted custody of children. However, the father has exclusive rights to guardianship of education and property or other male relatives.[57] However, if the mother is to have custody, it must be clear that she is mentally capable of "safeguarding the child's interests."[58] Where she is unable, custody will be given to a female relative who can maintain the child.[59] In a particular report, it is said that after a divorce, the children remained with the father if that is his wish, However, the woman may contest this arrangement in court, but may not succeed.[60] Most of the time, fathers would abduct the children into a fellow Muslim country where safe haven will be achieved, and his actions will go unchallenged.[61]

Nigeria, with a heterogeneous society of a federal nature, may encounter some challenges of culture and religion. The northern part of Nigeria is predominantly Islamic, and sharia law is applied in the administration of the family system. The criminal law of the northern part also recognises the tenets of the sharia law[62] while the southern, eastern, western region apply some other different laws.[63] If Nigeria domesticates the Convention, it will become a Federal Law. However, each state must consciously domesticate the Convention within its own state and

[55]Algeria Welcomes French Prime Minister, Signs New Bilateral Agreement to Deepen Relations https://www.africanews.com/amp/2022/10/10/algeria-welcomes-french-prime-minister-signs-new-bilateral-agreement-to-deepen-relations/ Accessed on 15 March 2025.

[56] Europe and Middle East, https://ustr.gov/countries-regions/europe-middle-east Accessed on 1 May 2023.

[57] Research Directorate, Immigration and Refugee Board of Canada, Ottawa, Nigeria: Divorce Law and Practice Among Muslims, Including Grounds, Procedures, Length of Process, Property Disposition, Child Custody, and Consequences for the Woman and her Family (March 2006) NGA101046.E: https://www.justice.gov/sites/default/files/eoir/legacy/2013/12/18/NGA101046.E.pdf(accessed 7 January 2025).

[58] Anne-Marie Hutchinson, International Parental Child Abduction (Jordans Publishing Limited, 1998) 17, 141.

[59] Research Directorate,' Immigration and Refugee Board of Canada, Ottawa, Nigeria: Divorce Law and Practice Among Muslims, Including Grounds, Procedures, Length of Process, Property Disposition, Child Custody, and Consequences for the Woman and her Family' (March 2006) https://www.refworld/docid/45f147882f.html (accessed 1 May 2023).

[60] Danish Immigration Service, 'Report on Human Rights Issues in Nigeria: Joint British-Danish fact finding Mission to Abuja and Lagos, Nigeria' 19 October – 2 November 2004 (accessed 7 January 2025).

[61] AA An-Naim (ed) *Islamic Family Law in the Changing World* (2002).

[62] Penal Code Act cap 53 LFN 2004.

[63] Criminal Code Act, LFN 2004.

establish its own Central Authority. It is doubtful that Northern states will domesticate the Convention. Dualism and plurality of the Nigerian legal system, especially within the family law system, may constitute a major impediment to the Convention in Nigeria. Schnitzer-Reese stated emphatically that cross-border abduction brings about a clash of different cultures, and the countries concerned face challenges of diversity in culture, religion, and legal systems, and more often than not, the parent deprived of the child has little or no recourse under international law.[64]

How then can a child abducted from Nigeria to a state party of the Hague Convention be returned? Nigeria may follow the path of the US in addressing this issue. The US International Parental Kidnapping Crime Act of 1993 provide imprisonment not exceeding three years for abducting a child with the intention to deny the parent his lawful parental right. The abducted child must be under 16 years and parent in this law refers to anyone who has lawful custody of the said child.[65]

The essence of this law is to categorise the matter of international abduction of children by parents as a form of kidnapping rather than a civil matter that may be resolved by parties on terms. If Nigeria adopts the kidnapping ideology in the context of international abduction of children by parents, it is possible to invoke extradition laws to ensure that a criminal who has abducted a child may be sent back by the other country. However, extradition laws also require a documented agreement[66] with the state where the child is abducted to, for it to operate.[67]

The United Nations Convention on the Rights of the Child (UNCRC) of 1989 is an international treaty that has received a 98% response from nations of the world, including Islamic states. The articles of the Convention focus on a child's "best interests," which are defined as the right to be cared for by parents, maintain contact with their parents, the right of children and their parents" to leave and enter their country for the purpose of maintaining contact with one another", and the right for children to be "heard" and to" participate in matters that affect their lives."[68] The

[64]EA Schnitzer-Reese 'International Child Abduction to non-Hague Convention Countries: The need for an International Family Court' (2004) 2(1) *Northwestern Journal International Human Rights* 3.

[66] Sec 1(1) Extradition Act E25 LFN 2004. Where a treaty or other agreement (in this Act referred to as an extradition agreement) has been made by Nigeria with any other country for the surrender by each country to the other, of persons wanted for prosecution or punishment, the National Council of Ministers may by order published in the Federal Gazette apply this Act to that country.

[67] For example, there exists an Extradition Treaty between Nigeria and South Africa.

[68] Article 9 of the United Nations' Convention on the Rights of a Child (UNCRC) 1989.

Convention also states clearly that children on no occasion shall be taken away from their parents unless it can be shown that the separation is to eventually save the child from harm.[69] Furthermore, the Convention states that no child shall be treated unfairly because children all over the world should not be discriminated against on the basis of colour, race, culture, religion, association or for any other reason.[70]

Nigeria has domesticated the UNCRC (as CRA 2003 at the Federal level and Child's Right Law in 34 out of 36 states) and may take advantage of the wider coverage and global acceptance of the UNCRC to prosecute international abduction of children by parents. These and many other legal actions may be deployed towards ensuring that the parent who abducts children does not end up having a field day while leaving the other parent helpless and without remedy.

6. LIMITATIONS OF REGULATION OF INTERNATIONAL CHILD ABDUCTION BY PARENTS IN NIGERIA

There is no specific comprehensive law that regulates international abduction of children by parents in Nigeria. The CRA 2003 deals with the protection of children generally. The provisions of section 27(1)-(3) of the CRA 2003 on abduction of a child within Nigeria or one taken outside Nigeria by any person are general provisions. The offender shall be convicted and imprisoned for a period ranging from seven to twenty years.[71] The CRA 2003 provides only punitive measures but does not deal directly with the multifarious issues that arise in respect of international abduction of children by parents, such as the return of the child to the habitual residence. The Criminal Code Act and the Penal Code Act also provide punishment for abduction and kidnapping a person.[72] Furthermore, prosecuting international abduction of children by parents under criminal law may be a slow process that would most likely not serve as a means of having the child returned.

Nigeria is not a party to the Hague Convention. As earlier discussed, the Convention is an international legal framework that resolves international abduction of children by parents, for example, it could prevent likely complications that arise in courts of countries that can also decide

[69] Article 9 UNCRC 1989.
[70] Article 2 UNCRC 1989.
[71] Section 27(1)-(3) CRA 2003.
[72] Ten years imprisonment for anyone convicted under section 364 Criminal Code Act, LFN 2004 and sections 271 and 273 Penal Code Act cap 53 LFN 2004.

the matter and facilitate the return of the child to Nigeria. To be implemented in Nigeria, the Hague Convention must be ratified and domesticated to make it part of Nigeria's local laws. Currently, Nigerian courts resort to discretion in deciding international abduction of children by parents.[73]

7. PERSPECTIVES FROM THE LEGAL REGIMES IN AUSTRALIA AND UNITED STATES

Australia has developed a comprehensive legal framework that deals with international abduction by parents. Australia ratified the Hague Convention on the 1st day of January 1987 and inserted it into Section.111 B of the Family Law Act 1975, which provides the necessary structures to enhance the performance of Australia under the Convention.[74]The Family Law (Child Abduction Convention) Regulations were subsequently enacted.[75] The Australian Court has expressed its firm view on international abduction of children in the case of *H. and H.*[76] stating emphatically that states ought to discourage international abduction by ensuring that the court that takes preeminence should be that of the state where the child was abducted.[77] The Family Law Act 1975 also spells out situations that are wrongful removals of the child, which qualify as abduction in Article 3 of the Convention.

The US has taken laudable domestic measures towards curbing the challenge of international abduction of children by parents before international abduction became an international concern.[78] Laws made on parental abduction include the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) 1997 and Parental Kidnapping Prevention Act of 1980. Under the UCCJEA, US courts accorded little recognition to the custody decrees of foreign courts, just the same way they treat decrees from their own neighbouring states. In theory, the US standard of

[73] Chaman Law Firm, 'Navigating Cross-Border Family Law Disputes and International Child Abductionin Nigeria' https://chamanlawfirm.com/family-law-dispute-and-child-abduction Accessed 17 May 2025.
[74] JV. Kay 'International Abduction of Children: An Australian Perspective' (1994) 32 *Family & Council Courts Review* 170.
[75] Ibid.
[76] (1985) FLC 91-640.
[77] (1985) FLC 91-640.
[78] EC. McDonald 'More Than Mere Child's Play: International Parental Abduction of Children' (1988) 6 *Dick Journal International Law* 284.

comity[79] governs the recognition and enforcement of decrees of other countries. Despite this standard, the courts in the US did not recognise foreign custody orders. The case of ***State ex rel. Domico v. Domico***[80] illustrates the fact that before the adoption of the UCCJEA, the Supreme Court of Appeals of West Virginia did not apply comity principles but independently decided custody-related issues on the principle of the child's best interests. In this case, consequent upon marital challenges, a father took his two children from West Germany to West Virginia. The mother of the children commenced a suit in a West German court to obtain an order granting her custody of the children. The court issued a decree granting her their custody. Subsequently, they were divorced in Germany. The mother thereafter made efforts to get custody of her children by filing a habeas corpus petition in the Supreme Court of Appeals of West Virginia. After careful consideration of the situation, the court refused to honor the German decree for custody on the basis that, considering the welfare of the children, it is more desirable for the father to retain the custody of the children.[81]

This ideology is akin to the provision of Hague Convention that allows a state where a child is retained to refuse his return to his habitual place of residence on the ground that such return may not be in the child's best interest. The UCCJEA as an advanced law, resolves many issues raised from the former law. It resolves jurisdictional issues When jurisdiction is determined, the court may make orders on custody accordingly. The purposes of the UCCJEA are clearly stated as follows:

(1) To avoid unhealthy competition among states on issues relating to child custody;
(2) To promote cooperation amongst courts by ensuring that the court that can best determine the child's best interest is allowed to do so;
(3) Ensure that suit for custody is commenced in a state where the child and his family have the closest connection;

[79] Comity is defined as "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws.
[80] 153 W. Va. 695, 172 S.E.2d 805 (1970).
[81] The Court explained that the children had completely adapted and blended to life in the United States of America and that they were adequately catered for in an adequate accommodation provided by their father, and that their father's income was five times better than the earnings of their mother who lived in Germany.

(4) Ensure that unending controversies on custody end, as this will enhance a conducive environment devoid of hostility for the said child;
(5) Deter persons from abducting children for the hope of securing awards of custody;
(6) Through cooperation have regard to the custody decrees of other States by avoiding re-litigation of custody proceedings;
(7) Ensure that custody orders or decrees are enforced in other States;
(8) That custody related matters may be improved through adequate communication and exchange of ideas on how custody matters.[82]

From the foregoing, it is apparent that domestic legislative activism is imperative in addressing the international abduction of children by a parent. The Hague Convention gives opportunities to states like the US to showcase their intelligible legislative ideas on the issue to other states that are currently experiencing the menace international abduction of children by parents in an increasing manner. Many African states including Nigeria, require international, regional and sub-regional cooperation on this matter so as to protect the child's best interest.

7. CONCLUSION

Despite court orders on custody, international abduction of children by parents has become prevalent, and Nigeria is not left out of the menace. At the international level, the Hague Convention on Civil Aspects of International Child Abduction 1980, with the extensive mechanism it provides and strict adherence to international standards, ensures that children abducted by parents are protected and returned to their habitual residence, except when it is not in the child's best interest. The Convention also handles jurisdictional challenges and fosters global cooperation. The US and Australia, which are both signatories to the Convention, have further addressed international abduction of children by parents through enactment of local legislation. Nigeria is not a signatory to the Convention and has no specific legislation that addresses international abduction of children by parents.

In conclusion, Nigeria requires a comprehensive legal regime to protect and ensure the return of children who are victims of international abduction by parents and should ratify and domesticate the Hague Convention.

[82] Section I of the UCCJEA states that the purposes of the Act.

7.1 RECOMMENDATIONS

The following suggestions are hereby put forward for Nigeria:

a. It is important that the executive arm of government in Nigeria tasked with signing treaties and conventions accede the Hague Convention and the National Assembly domesticate it by enacting it as law as required by section 12 of the 1999 Constitution to become a part of Nigeria's local law. Each state may also domesticate it as state law because it falls within the purview of Family Law,

b. The government of Nigeria may become more proactive by entering into bilateral treaties, that would be country-specific to ensure that the abductor is duly apprehended, no matter the jurisdiction he has escaped to. Such treaties would should not jeopardise the religious and cultural tenets other countries.

c. Nigeria may also advance the scope of its extradition treaty to more nations. This suggestion is further hinged on the proposal that a Parental Kidnapping Act be enacted, putting the matter of parental abduction within the purview of criminal law. This will diversify options available to a parent that the court has awarded custody and the state itself.

d. Local legislation could also be enacted at the Federal and State. Level in Nigeria. Useful provisions of legislation of other countries can be used as a guide.

e. Nigeria's religious and cultural diversities ought not hinder the ratification and domestication of the Hague Convention to enable her begin the journey to global cooperation with other contracting states.

f. It is important that the Hague Convention be reviewed to include enforcement mechanism and sanctions for non-compliance by contracting parties that fail to comply with its provision. Sanctions could be economic or diplomatic. The review could also include allowing courts to deal with cases of abductors who could be victims of abuse and domestic violence. It should also extend the age of children to be protected to seventeen years old.

LEGAL AND ETHICAL FRAMEWORK OF ISLAMIC LAW ON THE CONTEMPORARY ASSISTED REPRODUCTIVE TECHNOLOGY

K. A Hamzat-Umar,* M.I Olohungbebe* and R.M Imam*

Abstract

The act of reproduction is a fundamental aspect of human existence shared universally among people regardless of religious, cultural, or social backgrounds. Childlessness is frequently stigmatized globally and can result into significant social distress for couples and especially the woman folk. In response to infertility, many individuals seek assistance through scientific methods, especially in developing nations where such resources may be limited. The use of scientific means to enhance fertility is a contemporary topical issue that cannot be overemphasized. According to the European Society for Human Reproduction and Embryology, more than eight million babies have been born through the Artificial Reproductive Technology (ART) worldwide in the last 30 years. Islam acknowledges infertility as a challenge and permits seeking lawful remedies in accordance with the Islamic principles. This paper explores the various options available to couples seeking assisted reproduction and delves into the Islamic viewpoint on different Assisted Reproductive Technologies (ART), aiming to discern the permissibility and limits of these technologies under Islamic law. This study employs a doctrinal research method with reliance on the existing literature and analysis of the Holy Qur'an and Sunnah. The paper recommends that before pursuing ART, Muslim couples should seek knowledge of Islamic law to determine which methods align with the Islamic principles and values. The paper concludes that ART is permissible and encouraged; but only within the context of a valid marriage between a husband and wife; and solely during the duration of their marital contract within the context of Islamic legal framework and ethics.

***Keywords**:* Assisted Reproductive Technology, Infertility, Islamic Law, Reproduction.

1.0 INTRODUCTION

Islam offers a comprehensive and all-encompassing way of life, guiding both spiritual and worldly matters. As Allah states in the Qur'an, **"….*We have left nothing out of the Book*…."**[1] implying

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that the divine guidance is complete and thorough. This concept is further reinforced by the Prophet's (SAW) hadith, which declares, **" *Seek medical treatment, for Allah has not created a disease without creating a remedy for it, except for one thing – old age*"**[2] (*Bukhari*). This hadith encourages humanity to seek remedies for their ailments, emphasizing that Allah has provided guidance and solutions for every affliction, and it is an individual responsibility to seek them out. In implementing this principle, Islamic law provides a multi-faceted approach to healthcare.[3]

Firstly, Muslims are encouraged to invoke spiritual healing through prayer (*du'a*), recitation of the Quran, and seeking blessings from righteous individuals. Secondly, they are obligated to seek medical treatment from qualified professionals, as emphasized in the Hadith, seek medical treatment. Furthermore, Islamic law permits using natural remedies and holistic approaches, such as herbal medicine (*tibb nabawi*) and spiritual therapies, provided they do not contravene the principles of Islamic Law. Ultimately, the Islamic paradigm of healthcare underscores the importance of integrating spiritual, physical, and emotional well-being in the pursuit of holistic health.[4]

The emphasis on seeking medical treatment and a cure for ailments also extends to the realm of reproductive health. "Reproductive health according to the World Health Organization (WHO) is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes." In the context of assisted reproductive technologies (ART), Islamic law provides guidance on the permissibility of various treatments, such as in vitro fertilization (IVF), egg and sperm donation, and surrogacy. While ART can provide a means of alleviating the suffering of infertility, Islamic law prioritizes the protection of family ties, the preservation of lineage, and the prevention of harm. Therefore, Islamic jurists and scholars have developed guidelines for the permissible use of ART,

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[1] Qur'an 6:38

[2] IA Al-jauziyyah, '*Healing with the Medicine of the prophet'*. (Darussalam 2010) 27

[3] NSB Sellamat, '*The Model of Ijtihad in Fatwas Related to Health Care in Singapore'*. (PhD Dissertation. Universitas Muhammadiyah Malang, 2024). Accessed <https://eprints.umm.ac.id/id/eprint/7508/1/Final%20Thesis%202023%20Submission_Nenny%20Suzanah_Model%20of%20Ijtihad%20in%20Fatwas%20related%20to%20Health%20Care%20in%20Singapo.pdf> accessed 28 February, 2025

[4] D Terblanche, and S Abrahams. '*Integrating Maqāsid al-Sharīʿah into Islamic Psychology: Towards a Holistic Approach to Mental Health and Well-Being.'* Al-Wasaṭiyyah 3 (3) (2024) 114-149.

emphasizing the importance of informed consent, the protection of marital relationships, and the avoidance of procedures that may lead to harm or exploitation.

Assisted Reproductive Technology (ART) literally is any scientific method or procedure that helps with having children.[5] According to the World Health Organization (WHO), ART is defined as "any medical treatment or procedure aimed at helping individuals or couples conceive and have a child, it includes techniques such as In Vitro Fertilization (IVF), Intracytoplasmic Sperm Injection (ICSI), Gamete Intrafallopian Transfer (GIFT), Zygote Intrafallopian Transfer (ZIFT), Egg and Sperm Donation, Surrogacy, and Artificial Insemination (AI).[6] Dr. Edwards, an embryologist and Dr. Steptoe, a gynaecologist in the United Kingdom first pioneered the fertility technique called In Vitro Fertilisation Pre-Embryo Transfer (IVF–ET). In July 1978, they announced to the world the birth of the first test-tube baby, Louise Brown which was a landmark achievement in the science of reproductive medicine.[7] Since then, countless assisted reproductive techniques have surfaced, further refining and superseding earlier technologies.

Since the introduction of IVF-ET technology, over 8 million babies have been born worldwide as of 2022.[8] The probability of a successful pregnancy depends on various factors, including the age and reproductive health of both partners. Although reported success rates from ART programs can be confusing and misleading, the probability of a successful outcome has significantly improved, ranging from 30% to 70% at ART centres worldwide, depending on individual circumstances.[9]

An emerging technology that has the potential to revolutionize the field of ART is Artificial Womb, which is still in its infancy, but it has the potential to transform the way we approach reproductive medicine and ART. Artificial Womb, also known as Ectogenesis, refers to the artificial incubation of a foetus outside the human body, using a machine or device that simulates the conditions of a

[5] KA Hamzat-Umar, '*An Appraisal of the Islamic Perspective of Assisted Reproductive Technology'*. (LLM Dissertation, Faculty of Law University of Ilorin 2015)
[6] World Health Organization, '*Assisted Reproductive Technology (ART)'* (2020).
[7] MN Nordin, '*An Islamic Perspective of Assisted Reproductive Technologies*'. Bangladesh Journal of Medical Science, (2012) 11 (4), 252.
[8] European Society of Human Reproduction and Embryology (ESHRE). ART Fact Sheet (2022).
[9] American Society for Reproductive Medicine (ASRM), *'Assisted Reproductive Technologies (ART) Success Rates'* (2022).

natural womb.[10] The new era of ART is indeed tilting towards Artificial Womb, as researchers and scientists are exploring the possibilities of using Artificial Womb to improve pregnancy outcomes, reduce the risk of complications, and provide new options for individuals and couples struggling with infertility.

Islam acknowledges that infertility is a significant hardship. The pursuit by barren spouses of a remedy to infertility should, therefore, not be seen as a revolution against the fate decreed by God. Nevertheless, for the Islamic Law's tolerance not to be misconstrued as carte blanche for indiscriminate adoption of any method or technique, there is a pressing need to assess certain processes involved in Assisted Reproductive Technology (ART) which often raise questions bordering essentially on moral, ethical, and legal issues. The paper seeks to address the ethical and legal implications of ART from an Islamic perspective, providing guidance for Muslim couples, healthcare providers, and policymakers on the acceptable use of these technologies within the bounds of Islamic law and ethics.

2.0 CONCEPTUAL CLARIFICATION

In addressing the legal and ethical framework of Islamic law on contemporary Assisted Reproductive Technology (ART), it is essential to begin with a clear understanding of key terms and concepts that form the basis of this study. It lays the foundation for evaluating emerging technologies not only through classical *fiqh* principles but also through *ijtihād* (independent juristic reasoning), ensuring that rulings remain relevant and rooted in the timeless objectives of the Shariah.[11] These include Assisted Reproductive Technology (ART) itself and related concepts such as infertility, lineage (*nasab*), and *maqāṣid al-sharīʿah* (objectives of Islamic law), all of which bear legal and ethical implications in Islamic jurisprudence.

Assisted Reproductive Technology (ART) refers to a range of medical procedures used to address infertility by aiding the process of conception. The most widely known forms of ART include in vitro fertilization (IVF), intracytoplasmic sperm injection (ICSI), cryopreservation (freezing of gametes or embryos), gamete donation, embryo transfer, and more recently, artificial womb

[10] F Simonstein, *'Artificial Reproduction Technologies (RTs): All the way to the Artificial womb?'* Medicine, health care and philosophy, (2006) 9, 359-365

[11] MH Kamali, '*Principles of Islamic Jurisprudence'*. Cambridge Islamic Texts Society *Journal of Law and Religion* 15 (2001) 385-387.

technology (AWT) and uterine transplants. ART can be performed using the couple's own gametes or with the assistance of third-party donors and surrogates, which is where significant legal and ethical concerns emerge under Islamic law.[12]

Infertility, often the reason for resorting to ART, is medically defined as the inability to conceive after 12 months of regular unprotected sexual intercourse. In Islamic jurisprudence, while procreation is highly encouraged and viewed as a primary purpose of marriage (Qur'an 16:72), infertility is not considered a moral failing. Islam permits medical intervention to treat infertility provided it does not contravene established legal and ethical boundaries.[13]

A central concept in Islamic bioethics related to ART is *nasab* (lineage). Islamic law places a high premium on preserving the integrity of lineage, which is closely tied to issues of inheritance, identity, and family structure. Any ART method that introduces a third party's genetic material (e.g., sperm or egg donation, or surrogacy) risks confusion in *nasab* and is generally considered impermissible (*ḥarām*).[14]

Further, the Islamic legal framework is guided by the *maqāṣid al-sharīʿah*, the higher objectives of Islamic law, which include the preservation of religion (*dīn*), life (*nafs*), intellect (*'aql*), lineage (*nasab*), and property (*māl*). ART procedures are ethically evaluated in light of these objectives. For instance, preserving lineage and protecting human dignity are key reasons behind the prohibition of donor-assisted reproduction and surrogacy in Islamic law, whereas procedures that use the couple's own gametes within marriage may be allowed under the principles of *maslahah* (public interest) and *darūrah* (necessity).[15]

Moreover, contemporary technologies such as artificial wombs which propose the external gestation of human embryos introduce new terminologies and dilemmas that require fresh jurisprudential scrutiny. While they may present solutions to medical infertility or maternal risk,

[12] M Ghaly, *'Human Embryology in the Islamic Tradition: An Annotated Translation of al-Ghazālī's Chapter on Embryology'.* Islamic Bioethics: Current Issues and Challenges, 3–18 (2010).

[13] A Sachedina, Islamic Biomedical Ethics: Principles and Application. Oxford University Press (2009).

[14] V Rispler-Chaim, '*Islamic Medical Ethics in the Twentieth Century*'. *Brill* (1993). Accessed <https://books.google.com.ng/books?hl=en&lr=&id=QjIkB1UiXIIC&oi=fnd&pg=PP13&dq=Rispler-Chaim,+V.+(1993).+Islamic+Medical+Ethics+in+the+Twentieth+Century.+Brill&ots=j7uUqHcmMB&sig=kgS6x_H5jtWvBRSrTazGyPUdKJk&redir_esc=y#v=onepage&q=Rispler-Chaim%2C%20V.%20(1993).%20Islamic%20Medical%20Ethics%20in%20the%20Twentieth%20Century.%20Brill&f=false> accessed 18 May, 2025

[15] MA Al-Bar, and H Chamsi-Pasha, *'Contemporary Bioethics: Islamic Perspective'*. Springer, pp. 157–175 (2015).

they also raise complex questions regarding the definition of motherhood, the status of gestation outside the womb, and the moment of ensoulment, all of which have both theological and legal dimensions in Islam.[16]

3.0 ISLAMIC PRINCIPLES AND VALUES

The concept of family is deeply rooted in Islam, and its importance is evident from the very beginning of creation. The story of Prophet Adam (peace be upon him) and his wife Nana Hawwa (Eve) serves as a prime example. The Qur'an describes them as the first human beings created by Allah, and their relationship as the foundation of the first family (Quran 2:35-37).

A family typically consists of a father, a mother, and their children living together as a unit. The family unit is considered a sacred institution in Islam, it is not merely a social construct but a divine framework that nurtures love, compassion, and stability. The family unit serves as a sanctuary of support, guidance, and spiritual growth for individuals, and its members are encouraged to maintain strong bonds with one another.[17] The Quran emphasizes the importance of family ties, stating, "And We have enjoined upon man [care] for his parents. His mother carried him, [increasing her] weakness upon weakness, and his weaning is in two years. Be grateful to Me and to your parents; to Me is your return."[18] The primary purpose of a family in Islam is to worship Allah and follow His commandments. The family is seen as a means of supporting one another in this endeavour, with each member playing a vital role. The father is responsible for providing for and protecting his family, while the mother is entrusted with nurturing and caring for the children (Qur'an 4:34).

Children, in turn, are encouraged to show respect and gratitude towards their parents, particularly their mothers, who are often described as the epitome of selflessness and compassion (Qur'an 2:233). Prophet Muhammad (peace be upon him) emphasized the significance of family ties,

[16] AFM Ebrahim, '*Islamic Ethics and the Implications of Modern Biomedical Technology: An analysis of some issues pertaining to reproductive control, biotechnical parenting and abortion*'. Temple University, 40(2), 193–212 (1986). <https://www.proquest.com/pq1academic/docview/303434186?fromopenview=true&pq-origsite=gscholar&sourcetype=Dissertations%20&%20Theses> accesses 18 May, 2025

[17] KUl Huda, *'The family in Islam: A pillar of strength and unity'* (2024) <https://www.islamicity.org/101697/the-family-in-islam-a-pillar-of-strength-and-unity/> accessed 19 March, 2025

[18] Qur'an 31:14

saying, "The best of you is the one who is best to his family, and I am the best among you to my family." (*Tirmidhi*)

The belief of most Muslims is that Allah has predestined the number and fate of children for each couple, as stated in the Quran: "And Allah has extracted you from the wombs of your mothers not knowing a thing, and He gave you hearing, sight, and intellect that you may be grateful."[19] Prophet Muhammad (peace be upon him) encouraged marriage and procreation, saying: "Marry and multiply, for I will be proud of you among the nations on the Day of Resurrection." (*Abu Dawud*) Newlywed couples often pray for children, recognizing the importance of family and the value of raising righteous offspring. The Quran emphasizes the significance of parenting, stating: "O you who believe! Save yourselves and your families from a Fire whose fuel is men and stones."[20] As explained by Yusuf Ali, this verse emphasizes the importance of vigilantly protecting not only one's own actions but also those of loved ones. This concept is beautifully complemented by Qur'an 25:74, "Our Lord, grant us from among our wives and offspring comfort to our eyes and make us an example for the righteous." where believers pray for righteous family members who bring comfort and joy, serving as a source of spiritual fulfilment. By doing so, individuals become exemplary models of righteousness, ensuring the continuation of Allah's guidance through their wives, children, and descendants. Raising righteous children is considered a great reward, as they will be a source of benefit to society shaping the next generation of believers. Prophet (peace be upon him) said: "A righteous child is a flower from the flowers of Paradise." (*Tirmidhi*)

Scientifically, it's a fact that not all couples can procreate naturally due to various health issues affecting either the husband or wife. This is where infertility comes into play, and thanks to the knowledge and wisdom bestowed upon humans by Allah, avenues for addressing infertility have emerged. Allah encourages us to seek cures for our ailments, and this is evident in the Quranic verse: "And if Allah touches you with affliction, none can remove it but He, and if He touches you with good, He is Able to do all things."[21]

[19] Qur'an 16:78
[20] Qur'an 66:6
[21] Qur'an 6:17

Assisted Reproductive Technology (ART) is one such avenue that has been made possible through scientific advancements and the blessings of Allah. These technologies have brought hope to countless couples struggling with infertility, allowing them to build their families and experience the joy of parenthood. It's essential to recognize that these advancements are a manifestation of Allah's guidance and provision for humanity, as stated in the Quran: "And We sent down the Book and the Wisdom and the Prophethood to you and provided you with good things."[22]

As Muslims, we are obligated to follow Allah's commandments and adhere to the principles of *halal* (permissible) and *haram* (non-permissible) in all aspects of life, including seeking solutions to our health problems. In the context of Assisted Reproductive Technology (ART), Islamic Law has guidelines that dictate what is permissible and what is not. While seeking medical help for infertility is encouraged, not all ART methods are considered halal.

Islamic scholars and medical professionals have deliberated on these issues, and guidelines vary among different schools of thought. However, the underlying principle is to prioritize the sanctity of marriage, the integrity of the family, and the welfare of all parties involved. Allah has commanded us to seek knowledge and medical help when needed, but also to adhere to His guidelines and ethical boundaries. As the Quran says: ***"And eat of the good things We have provided for you and be grateful to Allah if it is Him you worship."***[23]

4.0 ISLAMIC LEGAL FRAMEWORK FOR ART

The treatment of fertility issues has undergone a significant transformation with the advent of Assisted Reproductive Technologies (ARTs).[24] Previously, medications and surgery were used to address hormonal deficiencies and anatomical defects, respectively, which were largely uncontroversial from an ethical and religious standpoint.[25] However, ARTs have dramatically altered this landscape, shifting the procreative process from a private, personal relationship

[22] Qur'an 5:110
[23] Qur'an 16:114
[24] MA Khan, JC Konje, '*Ethical and Religious Dilemmas of Modern Reproductive Choices and the Islamic Perspective*'. European Journal of Obstetrics &Gynecology and Reproductive Biology, (2019) 232, 5-9
[25] American Society for Reproductive Medicine. *'Optimizing Natural Fertility: A Committee Opinion'*. https://www.asrm.org/practice-guidance/practice-committee-documents/optimizing-natural-fertility-a-committee-opinion-2021/ accessed on 22 May, 2024

between husband and wife to an artificial, laboratory-based process often involving third or fourth parties.[26] This shift has raised complex ethical and religious concerns, challenged basic concepts and sparking debates among religious scholars, ethicists, and medical professionals.[27]

The primary sources of Islamic law are the Qur'an and Hadith (the sayings and traditions of Prophet Muhammad (SAW). The secondary sources also known as *Ijtihād* (legal reasoning) include: Qiyas (analogical reasoning), *Istihsan* (Juristic preference), *Maslaha Mursalah* (unrestricted public interest), *Sadd al-Dharai* (blocking the means), '*adat* and '*urf* (customary practice) and *Istishab* (presumption of continuity).[28] The secondary sources are resorted to when there is no legal provision in the primary sources taking into account the *Maqasid al-sharīʿah* (the objective of Islamic law) i.e. the preservation of religion, life, intellect, wealth, and progeny.[29] It is a known fact that the Qur'an and Sunnah do not explicitly address modern reproductive technologies such as in vitro fertilization (IVF), surrogacy, sperm or egg donation, and embryo freezing. Given that these advancements were not present during the time of revelation, Islamic scholars rely on secondary sources to derive rulings that align with the principles of Shariah while addressing contemporary ethical and legal challenges. The most relevant secondary sources in the context of assisted reproductive technology (ART) include *Istihsan* (juristic preference), Sadd al-*Dharai* (blocking the means), and *Maslahah Mursalah* (public interest), as they provide essential jurisprudential tools for navigating ethical and legal dilemmas in ART. *Istihsan* allows for flexibility in permitting procedures like in vitro fertilization (IVF) within marriage when strict analogical reasoning might otherwise prohibit them, while *Sadd al-Dharai* serves to prevent potential harm by restricting third-party involvement, such as sperm or egg donation, to safeguard lineage and family integrity. Meanwhile, *Maslahah Mursalah* justifies ART advancements that fulfill legitimate social and personal needs, such as addressing infertility, if they align with Islamic ethical principles.

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[26] M Saniei, and M Kargar, '*Modern Assisted Reproductive Technologies and Bioethics in the Islamic Context'.* Theology and Science, (2021) 19(2), 146-154

[27] HE Fadel, *'Assisted Reproductive Technologies. An Islamic Perspective'.* FIMA Yearbook. Islamabad, Pakistan: Federation of Islamic Medical Associations and Medico Islamic Research Council, (2002) 59-68.

[28] MH Kamali, '*Principles of Islamic Jurisprudence'*. Cambridge Islamic Texts Society *Journal of Law and Religion* 15 (2001) 385-387.

[29] HE Fadel, (2007) *Preimplantation genetic diagnosis: Rationale and ethics, an Islamic perspective.* Islamic Med. Assoc North Am, 39, 150-157.

ART has consistently revolved around the use of donor sperm, egg, and ovum, and the question of its permissibility merits *Ijtihād* (legal reasoning). On one hand, Islam has always encouraged men to contemplate, explore new horizons, and make use of all things Allah has created for them (Qur'an 2:29, 13:11, 16:14). The Prophet (peace be upon him) also encouraged all to seek a cure for diseases (*Bukhari*). However, the introduction of donor sperm, egg, and ovum not only blurs the line of descendants but also disrupts the purity of lineage. Lineage is a highly protected aspect in Islam, as seen in the provision of the Qur'an which says: *"it is He who has created man from water: then has He established relationships of lineage and marriage: for thy Lord has power (over all things)."*[30] This verse highlights Allah's creation of humanity from water and the diversity of human populations, emphasizing the importance of mutual understanding and cooperation among people of different ethnic, linguistic, and cultural backgrounds.

The concern about unclear lineage in the context of (ART) is that it may lead to unintended consanguineous relationships or incestuous marriages even with the strict provisions to prevent it from happening.[31] Consanguineous relationships refer to marriages between individuals who are related by blood, such as siblings, cousins, or other close relatives. In Islam, marrying close relatives is strictly prohibited[32] due to the potential genetic risks and the importance of maintaining clear family lines. However, with the use of donor sperm, eggs, or embryos, the biological relationship between parents and children may not be immediately apparent. This raise concerns that individuals may unknowingly marry a close relative, such as a sibling or cousin, which could lead to genetic disorders, family dynamics, or legal and social issues.[33]

To mitigate these risks, strict guidelines and regulations are essential to ensure that individuals using ART are aware of their genetic relationships and can make informed decisions about their reproductive choices. Therefore, to address infertility while adhering to Islamic law, the only

[30] Qur'an 25:54
[31] HE Fadel, *'The Islamic viewpoint on new Assisted Reproductive Technologies'.* Fordham Urb L J, (2002) 30, 147. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1851&context=ulj accessed 22 May 2024.
[32] Qur'an 4:22-23, 24:26
[33] MA Al-Bar, and H Chamsi-Pasha, *'Assisted Reproductive Technology: Islamic Perspective'.* Contemporary Bioethics: Islamic Perspective (2015) 173-186

permissible option is to use the husband's sperm and the wife's ovum, ensuring that the reproductive process remains within the marital bond and maintains the integrity of the family unit.[34] This approach also aligns with the Islamic principle of "avoiding harm" (*darar*), as it prevents potential harm to the family structure, lineage, and individual dignity. Islamic law has a subtle distinct view on Assisted Reproductive Technologies (ART), considering each method individually. Here's a brief overview of some of the methods.

In Vitro Fertilization (IVF) with its various modifications, i.e. GIFT (Gamete intra-fallopian transfer), ICSI (Intracytoplasmic sperm injection) using husband's sperm and wife's egg has been declared Islamically permissible, as it maintains the marital bond within the context of a valid marriage and doesn't involve third-party intervention. It is also permissible to freeze the remaining fertilized ova if they are used for the same married couple.

Artificial Insemination (AI), particularly Intrauterine Insemination (IUI) using the husband's sperm, is permissible in Islamic law[35], provided it occurs within the bounds of a valid and ongoing marital relationship. The procedure involves only the gametes of the married couple and maintains the biological and legal integrity of lineage (*nasab*). However, its permissibility is conditional: the insemination must take place while the marital bond is intact. Therefore, using the husband's frozen semen after his death or following a divorce is not allowed[36], as the reproductive act would fall outside the framework of a valid marriage, thus violating Islamic legal and ethical principles.

Surrogacy is impermissible in Islamic law[37], as it involves a third party carrying the fetus, which compromises the sanctity of marriage and leads to potential confusion in lineage (*nasab*) and family ties. This practice introduces an outsider into the exclusive reproductive domain of the marital relationship, violating the Islamic framework of procreation. The Qur'an states, *"None can*

[34] M Iqbal, '*Access to Assisted Human Reproductive Technologies in the Light of Islamic Ethics'* (Doctoral Dissertation, UCL University College London (2012).

[35] MTA Seyyed, *'Islamic Jurisprudence and Artificial Insemination'.* Medicine in Islamic culture: Islamic Medical Jurisprudence Part II: *The Responses of Islamic Law to Medical Dilemmas*. (2012)

[36] Islamic Medical Ethics: The Imana Perspective. (2005). *Journal of the Islamic Medical Association of Noth America (JIMA)* Vol. 12, No 4.

[37] Surrogacy: Islamic principles on family planning. Qasim publications. Pg 150-153 http://www.beautifulislam.net/family/surrogacy.htm accessed on 22nd May, 2024.

be their mothers except those who gave birth to them…" (Qur'an 58:2), affirming the significance of biological motherhood and the natural maternal bond. Surrogacy disrupts this divine order and is viewed as contrary to the will and design of Allah in human reproduction[38]. Moreover, scholars agree that if surrogacy is undertaken despite its prohibition, the birth mother is legally recognized as the real mother, reinforcing the importance of gestation in establishing maternal identity in Islamic jurisprudence.

Donor sperm or egg is categorically prohibited in Islamic law, as it introduces genetic material from a third party outside the marital bond, thereby compromising the sanctity of marriage and violating the principle of lineage (*nasab*) preservation—an essential objective of *maqāṣid al-sharīʿah*. The Qur'an emphasizes the importance of clear lineage: *"Call them by [the names of] their fathers. It is more just in the sight of Allah…"* (Qur'an 33:5). Such third-party involvement raises profound ethical and legal concerns, including inheritance disputes, identity ambiguity, and the risk of future incest due to donor anonymity. Jurists have likened this to *zinā* in its effect on lineage, even if physical adultery is absent.[39] Hence, all major Islamic schools unanimously forbid the use of donor gametes, permitting only the husband and wife to contribute genetic material within a valid marriage.

Embryo donation is impermissible in Islamic law, as it involves the transfer of a fertilized embryo created from the sperm and egg of another couple into the uterus of a woman who is not the genetic mother. This practice introduces multiple third parties, thereby intensifying the concerns associated with gamete donation, particularly the violation of the Islamic imperative to preserve lineage (*nasab*). It creates legal and ethical confusion regarding parentage, custody, inheritance, and filial obligations, contravening the Islamic principle that procreation must occur solely between spouses within a valid marriage. Additionally, embryo donation has been rejected by classical and contemporary jurists based on *sadd al-dharā'iʿ* (blocking the means), due to its potential to cause lineage ambiguity, commodification of reproduction, and systemic abuse. Thus, even when

[38] Ibid
[39] A. Sachedina, '*Islamic Biomedical Ethics: Principles and Application'*. Oxford University Press (2009).

pursued for altruistic purposes, embryo donation remains prohibited across all major Islamic legal schools.

Pre-implantation Genetic Diagnosis (PGD) is considered permissible in Islamic law when used for medical purposes, such as detecting severe or life-threatening genetic disorders prior to embryo implantation during IVF. This aligns with the Islamic legal maxim *al-darar yuzāl* ("harm must be eliminated") and supports the *maqāṣid al-sharīʿah* objectives of preserving life (*nafs*) and intellect (*ʻaql*). Islamic scholars and institutions, including Al-Azhar and the Islamic Organization for Medical Sciences (IOMS), have conditionally endorsed PGD[40], provided that it involves the gametes of a lawfully married couple, does not result in unjustified destruction of embryos, and is not used for non-medical sex selection or enhancement of traits. While PGD offers significant benefits in preventing suffering and protecting future generations, its misuse for cosmetic or gender preferences remains ethically problematic under Islamic law.

Gamete Intrafallopian Transfer (GIFT) is deemed permissible in Islamic law as it involves the placement of the husband's sperm and wife's egg into the wife's fallopian tube for natural fertilization, without involving third parties or external fertilization. This procedure maintains the sanctity of marriage, ensures lineage (*nasab*) clarity, and aligns with the Islamic requirement that procreation occurs exclusively within a valid marital relationship. Since GIFT closely mimics natural conception and upholds both ethical and legal principles in Islamic jurisprudence, many contemporary Muslim jurists classify it as a legally sound method of treating infertility, provided it is performed while the marital bond remains intact.

Zygote Intrafallopian Transfer (ZIFT) is a form of assisted reproduction in which the egg is fertilized with the husband's sperm outside the body and the resulting zygote is transferred into the wife's fallopian tube. In Islamic law, ZIFT is permissible under specific conditions: the gametes must originate exclusively from a lawfully married couple, the transfer must occur while the marriage is intact, and no third-party involvement is allowed. Although fertilization takes place in

[40] Islamic Organization for Medical Sciences (IOMS) (1996). *Reproductive Health and Islamic Ethics*. IOMS, Kuwait.

vitro, the procedure is accepted by scholars as it preserves lineage integrity and upholds the ethical parameters of *Shariʿah*. ZIFT also aligns with the Islamic principle of *taysīr* (facilitation) in addressing infertility, so long as it remains within the bounds of lawful medical intervention.

5.0 ETHICAL CONSIDERATION IN ART

As previously discussed, ART has revolutionized the field of reproductive medicine, offering hope to individuals and couples struggling with infertility. However, it also raises important ethical considerations. The use of ART raises ethical concerns related to the welfare of the resulting children, the potential for exploitation of vulnerable individuals, and the possibility of unintended consequences.[41] Ethics is sometimes thought to be merely a matter of individual preference or cultural convention. Although ethical judgements may indeed express personal preferences and may be connected in complicated ways with cultural conventions, ethics itself is a form of rational inquiry that concerns how we should live and what we should do. Some ethical issues are matters of debate: people of goodwill can reason about them but still reach differing conclusions.[42]

The advances in reproductive biology that have made it possible to produce human pre-embryo in vitro have been among the most significant scientific achievements of the past years. Society's views on the new techniques were divided between pride in the technological achievement, pleasure at the newfound means to relieve the unhappiness of infertility, and unease at the apparently uncontrolled advance of science, bringing with it new possibilities for manipulating the early stages of human development[43].

As we delve deeper into the ethical implications of Assisted Reproductive Technology (ART), our attention turns to the pressing concerns surrounding artificial womb technology. Questions as to how the foetus will be nourished in the artificial womb? Is gestation outside the human body altering divine creation? Does this technology interfere with ensoulment (Ruh)? Could it lead to the commodification of childbirth? Will children born of this technology not suffer from psychological and cognitive consequences?

Artificial Womb Technology

[41] American Society for Reproductive Medicine. (2020). Ethical considerations of assisted reproductive technology.
[42] Australian Government Ethical guidelines on the use of assisted reproductive Technology in Clinical Practice and Research 2004 (as revised in 2007)
[43] Warnock Report of the Committee of Inquiry into Human Fertilisation and Embryology 1984.

Artificial womb technology (AWT) is a system designed to replicate the conditions of a womb for extremely premature infants, providing oxygenation, nutrition, and a warm, fluid-filled environment to support their physiological development and maturation.[44]

Currently, artificial womb technology is still very much in the developmental pipeline, and it is highly uncertain as to what level of safety and efficacy can be achieved in the near future which makes it evolving and being debated by scholars.[45] The potential application of this new technological platform is the advancement of human reproduction and prenatal medicine by enabling the survival of extremely premature newborns, as well as providing a novel route to motherhood for women without a functional womb or who cannot otherwise gestate a foetus to term due to high-risk traditional pregnancy.[46] While these may align judging by the intent for which it was applied, there are other possible applications that will bring controversy in the society. Among this application is the use of this technology to enable greater gender equality by allowing healthy women to avoid the physical burdens and pains of pregnancy and childbirth.[47] Another application is to lessen the moral guilt of abortion by sustaining life of removed foetus within the artificial womb environment and then giving it up for adoption or orphanage upbringing after

[44] De Bie, R Felix, and others. *'Ethics considerations regarding artificial womb technology for the fetonate.'* The American Journal of Bioethics 23.5 (2023): 67-78. < https://www.tandfonline.com/doi/pdf/10.1080/15265161.2022.2048738> accessed 20th March 2025

[45] S Zaami, and others *'From the Maternal Uterus to the "uterus device"?: Ethical and Scientific Considerations on Partial Ectogenesis'*. European Review for Medical and Pharmacological Sciences, 25(23), (2021) 7354-7362 <https://iris.uniroma1.it/bitstream/11573/1610589/1/Zaami_Maternal_2021.pdf> accessed 25th July 2024

[46] Ibid

[47] G Cavaliere, *'Gestation, equality, and freedom: ectogenesis as a political perspective'*. Journal of medical ethics, *46*(2), (2020) 76-82. https://d1wqtxts1xzle7.cloudfront.net/61988873/medethics-2019-105691.full20200204-69312-1bnxydv-libre.pdf?1580831837=&response-content-disposition=inline%3B+filename%3DGestation_equality_and_freedom_ectogenes.pdf&Expires=1742508025&Signature=Thz~PJfXvPHcMloVbUPt9SxEHWgwHBHK2BDLYx1AwBHcBn6Qr7lACOTurW8uyON7J4Z-du5W1TbC2nM2Ju4qsnfbq3q~2XOaxIoQ0~lOyxCzrE-9P9Gq28qd2GfMnatIall-fdUjqEjBw0ogktbxZUDQs7D3CM6vtHt6zGfe~kzWYE-z4L~9TB79x8oomKzbO9exIcnh6ZxMFMSeCNbu51jmVW291Q817N20VCWxxaY8PvoAnzpK81SM7Xt2q-P9m-mBWicShnsAS~EKIARu1tYIDZhOLwcAifwL2khGY-NbGas3DlFoxzln3LXwvHBig888eJe4BZ0XirC3P2vGLA__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA accessed 28 July 2004

coming to term.[48] It is also an avenue to enable parenthood for individuals "single mother or father", lesbians, and gay couples.[49]

From the above forms of applications, ectogenesis may comprise two distinct approaches: "complete" ectogenesis and "partial" ectogenesis, while some conditions for utilizing artificial womb technology will be justifiable others are non-justifiable for supporting extracorporeal gestation.[50] There are different reactions and concerns that will arise which must be dealt with individually, the moral, ideological, religious belief and practical considerations.

6.0 ISLAMIC LAW PERSPECTIVE ON THE ETHICAL CONSIDERATION

In a natural pregnancy, the mother's body provides essential nutrients, hormones, and immune protection through the placenta and umbilical cord, ensuring proper foetal growth and development. The Qur'an explicitly describes the womb (*rahm*) as a sacred space where Allah forms and develops life naturally.

> *"He created you (all) from a single person: then created, of like nature, his mate; and He sent down for you eight head of cattle in pairs: He makes you, in the wombs of your mothers, in stages, one after another, in three veils of darkness. Such is Allah, your Lord and Cherisher: to Him belongs (all) dominion. There is no god but He: then how are ye turned away?"*[51]

Yusuf Ali in his commentary highlights Allah's power, wisdom, and divine design in human creation, particularly in the natural stages of fetal development within the womb. He emphasizes that the womb is a sacred space where life is nurtured under Allah's command, shielded by three

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[48] J Räsänen, '*Regulating abortion after ectogestation. Journal of medical ethic*s', 49, (2023) 419–422. <https://philarchive.org/archive/RSNRAA> S Segers, G Pennings, and H Mertes, '*The ethics of ectogenesis-aided foetal treatment'*. Bioethics, 34, (2020) 364–370.

[49] LL Kimberly, ME Sutter, and GP Quinn, *'Equitable access to ectogenesis for sexual and gender minorities'.* Bioethics, *34*(4), (2020) 338-345.

[50] Muhsin, S.M., Chin, A.H.B., and Padel, A.I. '*An Ethico-Legal Analysis of Artificial Womb Technology and Extra corporeal Gestation Based on Islamic Legal Maxims'. The New Bioethics,* 30(1), (2024) 34-46 https://d1wqtxts1xzle7.cloudfront.net/107258836/Ethico_legalWombTechnology-libre.pdf?1699553111=&response-content-disposition=inline%3B+filename%3DAn_Ethico_Legal_Analysis_of_Artificial_W.pdf&Expires=1742508773&Signature=Vvaff8U66jI-fOc9az~xTXudY5nS3rzpJZNcx2OxEVLxY7MSNME7qM9b-OHOZFzIXqhCDiJyensdhtSNuDefnVj7h0ivdVE6ZSGrCmLMMx2iied~dcj2Ur9dvW-T8eNQ~UwZQ~IwfZweQB~2Wu4Q4YiFFvtHITMC6KbFylzDsIy~lHGkH95lXd5KWRiFG2WbFtX-IvCC68xLODcqHyES1Y~xfc0ztNNb6gJuwCeVMJOo4CnYned8uVRvTPAk8FoHSD8Yz0tW-GG3lcJg-gP5ptuf4nQguNT~05JE7zMfE6I3CTXfTTvzmDF2Et7HrrR-hIMxRtJuxIEESErPo95XQA__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA accessed 30t July 2024

[51] Qur'an 39:6

veils of darkness (the abdominal wall, uterus, and amniotic sac). This interpretation reinforces the idea that gestation within the mother's body is an essential part of divine creation, raising critical ethical concerns about the use of artificial womb technology (AWT) from an Islamic perspective. If AWT removes the biological role of the womb, it could challenge the natural order established by Allah, as gestation outside the human body was not the method ordained in His divine plan. Furthermore, Yusuf Ali's emphasis on Tawhid (Allah's absolute sovereignty over creation) implies that human intervention in fundamental processes of life must align with Shariah principles. While medical advancements can be a form of *Maslahah* (public benefit) when addressing infertility or medical necessity, they should not alter the divine nature of human reproduction for mere convenience.

The Qur'an also states that:

> *"We created man from an extract of clay; Then We placed him as a drop of sperm in a place of settlement, firmly fixed; Then We made the sperm into a clot of congealed blood; then of that clot We made a (foetus) lump; then We made out of that lump bones and clothed the bones with flesh; then We developed out of it another creature. So blessed be Allah, the Best to create!"*[52]

The above verses also emphasize that human gestation follows a sacred, step-by-step process within the mother's womb, as designed by Allah. The phrase *"Then We developed out of it another creature"* (i.e., the point at which the fetus becomes a distinct human) raises questions about the moment of ensoulment (*Ruh*) in AWT. Scholars debate whether ensoulment (which occurs at 40 or 120 days according to Hadith) would happen if the fetus develops outside the womb. This uncertainty makes AWT highly controversial from an Islamic perspective. Thus, the provisions of Qur'an 39:6 and 23:12-14 serve as a theological basis for discussions on bioethics, suggesting that while medical advancements can assist in procreation, they must not disrupt Allah's natural design of human creation.

Artificial womb technology (AWT) presents an alternative to surrogacy, which is strictly prohibited under Shariah due to concerns over lineage confusion and the exploitation of surrogate women, who are often from lower socio-economic backgrounds. Like surrogacy, AWT could lead

[52] Qur'an 23: 12-14

to the commercialization of childbirth, where artificial wombs become commodities controlled by corporations or governments, raising significant ethical concerns. The risk of child commodification, exploitation of the poor, and unethical embryo use (e.g., for experimentation) aligns with the Islamic principle of *Sadd al-Dharai* (blocking the means), which seeks to prevent potential harm before it occurs. Therefore, from an Islamic perspective, strict ethical regulations would be necessary to ensure that AWT does not violate core principles of lineage integrity, parental rights, and human dignity.

7.0 IJTIHAD FRAMEWORK ON ARTs

By the beginning of the 1980s, deliberations on Islam and biomedical ethics started to assume a systematised and collective form through combining contributions from Muslim religious scholars and (Muslim) biomedical scientists.[53] This brought about Islamic Organization for Medical Sciences (IOMS) where the issue of assisted reproduction was first addressed in their Fiqh Medical Seminar in May 1983.[54] Islamic jurists, seek to be practical, up to date, and theologically sound in their judgements. The operational structure of collective 'ijtihad has emerged from these concerns as individual jurists were no longer expert in all of the relevant disciplines, both religious and scientific, required for morally evaluating modern technologies and social structures.[55] That is why physicians, ones deemed trustworthy in terms of their religiosity and familiarity with the 'western' biomedical enterprise, are brought to help jurists accurately understand the biomedical science and technology at issue, as well as to properly conceive the ethical challenge at hand.[56]

For an action to be permissible, all means of achieving it must be in line with principles of Shariah and when it comes to ARTs, the preservation of lineage and the sanctity of marriage must be respected. The ART practitioners must adhere diligently to the fundamental ground rules summarised below in other not to contravene the rules of Sharia which have been put in place by

[53] M Ghaly, *'Biomedical scientists as co-muftis: Their contribution to contemporary Islamic bioethics'*. Die Welt des Islams, *55*(3-4), (2015) 286-311.
[54] A AbdulRahman, *'The Role of Islamic Organization for Medical Science in Reviving Islamic Medicine'*. Journal of Islamic Medicine Association of North America, (2015) Vol. 32, No 2.
[55] AI Padela, K Klima, and R Duivenbode, *'Producing Parenthood: Islamic Bioethical Perspectives & Normative Implications'*, The New Bioethics, (2020). 26(1), 17-37.
[56] M Ghaly, (2015).

Allah for the common good, decency, and dignity of the society.[57] These are based on the conclusion of the IOMS and the opinion of other medical shariah authorities around ART.

i. The inviolability of marital contracts must not be dishonoured at any point in time during the ART process.
ii. The involvement of a third party in the equation is totally unacceptable whether in the form of a sperm, an ovum, an embryo, or a uterus. This makes surrogacy in all its forms not allowed under the Islamic law.
iii. Once the marital contract has been terminated either due to divorce or death of husband assisted reproduction can not be performed on the ex-wife or widow.
iv. The free informed consent of the couple must be sought when it comes to cryopreservation i.e. freezing and storing the excess pre-embryo produced which remains the property of the couple.
v. Highest standard of professionalism, trustworthiness, integrity and responsibility must be maintained by all staff participating in the ART program.
vi. Embryo research for the advancement of scientific knowledge and the benefit of humanity is allowed for 14 days post fertilization on surplus embryo donated for research with the informed consent of the couple.

[57] AA Alaro, '*Assisted Reproductive Technology (ART): The Islamic Law Perspective'*, Islam and Bioethics, publication of Ankara University, Turkey, (2012) pp. 95-108 <https://d1wqtxts1xzle7.cloudfront.net/35104847/Assisted_Reproductive_Tech_pdf-libre.pdf?1413189575=&response-content-disposition=inline%3B+filename%3DASSISTED_REPRODUCTIVE_TECHNOLOGY_ART_The.pdf&Expires=1742514043&Signature=BQZ7X3eHLv2lq3-M8z5nMmjgkCQOL9Sc5O96bjhCPkIGI8K2nfrgQJy7QV~tDQFkj-AWhRYwhGgjDotN14DTfJncei~wdGHILZ4QPsai3LmL57ObBW1GvY-WYscC5YoePsZAWDuF5AqmK-A2jsCKTGnxP1zu2UcNObT-wih~1qfmJzo~aUmJ-7OFXtascWoa43gnEAr07-zFr206u4-4ZRVShQ4nmBTVri6rQd-GUx2gh1SnOD-4nfMWrDjQmsg-qh4gk347ObQ4BlDypGJGdojvSqSrs4fgzm-jp20iUN5rxK4rCRB2qdyHUsbZYPXuQWyCQmFhQ-tIyKl2R66P5Q__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA> accessed 2nd August 2024

8.0 CONCLUSION/RECOMMENDATIONS

In Islamic law, ARTs are allowed but there must be a legal union of husband and wife as recognised under the law. A child should bear the name of his father and none other, the introduction of a donor embryo or sperm amounts to having a third party into the union which indirectly amounts to zina, and the chain of lineage is of great importance in the sight of the creator.

This paper recommends that Islamic Medical law and ethics be introduced as a course in the universities, targeting students of law and medicine. This course will provide students with a comprehensive understanding of the ethical and legal dimensions of medical practice from Islamic perspective. It will allow them to navigate the complexities of modern medical technologies while they will be able to adhere to Islamic principles and rules. By integrating Islamic Medical law and ethics into the curriculum, future legal and medical professionals would be well-versed in the religious and scientific aspects of healthcare, leading to more informed decision-making and *Sharīʿah* best practices. In furtherance to this, medical practitioners should acquire knowledge of different religious perspective on assisted reproduction in order to advise patients appropriately. Lastly, *fatwas* passed with regards these technologies should be well publicised for all to be informed of the accepted options in Islamic law.

LEGAL MEASURES FOR EFFICIENCY TO COUNTER INSIDER THREAT IN AVIATION SECURITY IN NIGERIA

Ijeoma Joy Adedokun*

Abstract

The Nigerian Civil aviation industry faces significant security challenges, including the threats posed by insiders. These include airline employees, airport staff and contractors having authorized access to sensitive areas and system, making them potential security risk. In recent times, there are recorded instances of insider threat militating against efficient and virile aviation industry in Nigeria. One of the instances occurred in November 2022, where security screeners and immigration personnel at Murtala Mohammed International Airport Lagos were reported to have planted drugs in passengers' luggage to demand bribes. The same airport, has a high number of stowaway incidents, which aviation security experts attributed to frequent security breaches due to possible collaboration. The paper adopts a mixed method approach, combining surveys, interviews and case studies to gather data from aviation security experts, airline employees and airport staff. The paper examines the insider threat phenomenon in the Nigerian civil aviation industry and identifies key motivators for insider threats, which include financial gains, ideological extremism and revenge. It also highlights vulnerability in current security framework including inadequate background checks, non-implementation of strict access control and insufficient training. Consequently, the study recommends a multi-faced approach to mitigating insider threats, including conducting regular background checks, implementing strict access control, regular training and awareness programs, improved access control measures. The work specifically suggests the implementation of mitigation measures such as increased monitoring and proactive efforts on security awareness training to safeguard airport resources and the travelling public against acts of unlawful interference which will usher in a regime of responsive aviation governance for sustainable development in Nigeria.

Keywords: Insider threat, ideological extremism, aviation security, mitigation measures, stowaway incidents

INTRODUCTION

An airport is a complex entity with multiple occupants, a transient population and time-critical operations. Such an environment is vulnerable to a variety of different risks and threats.[58] Airports are critical infrastructures that handle large volumes of passengers and sensitive information daily. While security measures primarily focus on external threats, it is crucial for airports to recognize the potential risks posed by insider threats. In the Nigerian aviation industry insider threat poses a significant concern and it may manifest in form of malicious threat that comes from people within the aviation industry, such as employees, former employees, or contractors.

In the Nigerian aviation industry, there is a high risk of insider threats due to several labor infractions in the industry that may lead to security breaches. These individuals may use their access to compromise security intentionally or unintentionally[59] by illicit taking advantage of their positions to smuggle restricted items, substances, or people into secure areas, share sensitive data, including details by virtue of their privileged access or knowledge.[60] The situation is difficult to manage because of the inter-dependencies and web of information that moves around an airport, more importantly that the motives of such saboteur can be varied and ranges from gaining financial advantage through low-level or organized crime activities. Sometimes, it can be issue-driven, terrorism focused, or an individual may become an insider simply because he is disgruntled or unhappy with the way he has been treated by the industry. However, the motivation may also be due to a combination of the above factors.[61] In recent time, there are recorded instances of insider threat militating against efficient and virile aviation industry. One of the instances occurred in November 2022, where security screeners and immigration personnel at Murtala Mohammed International Airport Lagos were reported to have planted drugs in passengers' luggage to demand bribes.[62] The same airport, has a high number of stowaway incidents, which aviation security

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[58] David Bamaung, Security: The hidden 'insider' threat of the aviation sector, International Airport Review, <https://www.internationalairportreview.com/article/73985/security-the-hidden-insider-threat-of-the-aviation-sector/ > accessed on 6 March, 2025.

[59] International Civil Aviation Organization, *Second African-Indian Ocean (AFI) Aviation Security and Facilitation Symposium,* 2017 < https://www.icao.int > accessed on 6 March, 2025.

[60] Ibid

[61] Ibid

[62] THISDAYLIVE *Tackling Security Breaches, Insider Threats at Lagos Airport* <https://www.thisdaylive.com > accessed on March 10, 2025

experts attributed to frequent security breaches due to possible collaboration.[63] In order to mitigate incidences of insider threats, this work broadly aims at having a critical examination of the security breaches attributable to insider threats within the context of in the civil aviation industry, in Nigeria .This is done by embarking on dispassionate review of the myriads of security breaches caused by insider threats and the available legal and institutional machinery for curbing them in Nigeria. The paper specifically examines the nature of security breaches caused by insider threats, the impacts of the relevant authority at obviating or reducing insider threats to the barest minimum within the prism of the Nigerian civil aviation industry. The work suggests, among others, the implementation of mitigation measures such as increased monitoring and proactive efforts on security awareness training to safeguard airport resources and the travelling public against acts of unlawful interference which will usher in a regime of responsive aviation governance for sustainable development in Nigeria.

THE NATURE OF INSIDER THREATS IN AVIATION SECURITY

An insider in this context refers to one or more individuals with access or insider knowledge that allows them to exploit vulnerabilities of the transportation domain.[64] He has the wherewithal of exploiting or has the intention of manipulating his role or knowledge for unauthorized purposes. Such an insider may be full or part-time permanent employees, individuals on attachment or secondment, contractors, consultants, agency staff or temporary staff.[65] Essentially in an airport environment, an insider could be anyone who works at the airport, like baggage handlers, security personnel, or airline staff who has legitimate access to the organization's information or assets and exploits it for unauthorized purposes like intentional sabotage and theft, inadvertent negligence that compromises airport security, intentional damaging of assets or infrastructure, facilitation of unauthorized third-party access, unauthorized disclosure of data or information, financial corruption, smuggling drugs or other commodities to, or from a country through aircraft or cargo,

[63] Of Insider Threat and FAAN's Security Apparatus < https://www.thisdaylive.com >accessed on March 10, 2025

[64] United States Department of Homeland Security, *Transportation Security Administration, Insider Threat Awareness, International Civil Aviation Organization Global Aviation Security Symposium* 2018, 3 available at < https://www.int > accessed on April 17, 2025.

[65] International Air Transport Association, *Insider Threat Mitigation Guide.* available at <https://www.cisa.gov> accessed on April 17, 2025.

etc.[66] as well as disrupting flights, all of which may undermine the operational vision, mission and standard of the industry.[67]

Insider threat may be classified into *malicious insider threat* and *Non-malicious insider threat*, while the former denotes illicit act by an insider done intentionally or willfully against an airport or an airline without any legal justification, the latter is borne out of inadvertence, carelessness or levity. The two are linearly related as they constitute common tools capable of causing harm to any segment of aviation industry. [68] Never the less, a further scholarly explanation on malicious insider threat is that the operation of an airport requires resources of thousands of employees, whereby some of them have access to sensitive security areas or work around and in the aircraft. Perpetrators of unlawful acts often look for the weakest link in the security chain of defence of which airport employees could be one, as they have detailed knowledge of the operational procedures and weakness of the system which could be easily exploited by any disgruntled elements to perpetrate the act of unlawful interference.[69] In consequence, all airport employees with access to sensitive security areas or knowledge about relevant security processes have to take reasonable care to eschew becoming an insider threat.

Different forms of malicious insider involvement are conceivable, an employee who is being goaded by somebody outside the airport system to disclose information that can jeopardize aviation safety is obviously being malicious. Also, an airport worker who accept bribes in order to pass a bag containing restricted items through security check with or without knowing that they are facilitating the placing of a bomb onboard the aircraft is being malicious. Therefore, typical activities of a malicious insider include spying, release of sensitive information, sabotage,

[66] Ibid

[67] David Bamaung, Security: *The hidden 'insider' threat of the aviation sector*, International Airport Review, <https://www.internationalairportreview.com/article/73985/security-the-hidden-insider-threat-of-the-aviation-sector/> accessed on March 6, 2025.

[68] Melina Zeballos, Carla Sophie Fumagalli, Signe Maria Ghelfi, Adrian Schwaninger, *Why and how Unpredictability is Implemented in Aviation Security* – A first Qualitative, Science Direct Books and Journals study <https://www.sciencedirect.com/science/article/pii/S2405844023010290#bib34 > accessed on March 6, 2025.

[69] International Civil Aviation Organization- *Second African-Indian Ocean(AFI) Aviation Security and Facilitation Symposium*, Gaborone , Botswana, 2017 <https://www.icao.int> accessed on March 11, 2025

corruption, impersonation, theft, running malicious software smuggling, espionage, bypassing security controls and terrorist attacks.[70]

The non-malicious insider threat otherwise known as unintentional insider threat is not associated with any malicious intent associated but susceptible to causing harm or substantially increased the probability of future serious harm to the confidentiality, integrity, or availability of the airport or airline's information or security. Potential incidents may include accidental disclosures of sensitive information or data. For example, an aviation worker who posts about his or her job responsibilities and details on social media may not know that he or she is disclosing some vital information to some criminal minded people.[71] Be that as it may, a person committing an act of non-malicious insider is not free from culpability.

LEGAL AND THEORETICAL FRAMEWORKS FOR INSIDER THREAT IN CIVIL AVIATION

Due to the high sensitivity of aviation security particularly the issue of insider threat and the peculiar characteristics of the techniques it uses, it should be ruled by legal instruments which shall provide a structured and coherent set of rules and regulations that govern it. The legal instrument will provide among others, clear definitions of what constitute an insider threat, as well as guidelines for identifying, reporting and responding to such threat. Insider threat is a global phenomenon that the International Civil Aviation Organization (ICAO) takes with utmost commitment. ICAO Annexes sets internal standards and recommended practices for civil aviation, covering various aspects from airworthiness to security and environmental protection.[72] ICAO Annex 17 provides standards and recommended practices for aviation security, including measures to prevent insider threats. Besides ICAO Aviation Security Manual offers guidance on implementing effective aviation security measures, including those related to insider threats.[73]
Domestically, Nigerian Civil Aviation Act, 2022 establishes the Nigerian Civil Aviation Authority (NCAA) and the Authority made Civil Aviation Security Regulations (NCAR), 2015. It focuses

[70] ibid
[71] ibid
[72] Annexes to the Convention to International Civil Aviation(ICAO) available at <https://www.bazl.admin.ch > accessed on March 12, 2025.
[73] ICAO Annexes and Doc Series available at <https://skybrary.aero > accessed on March 12, 2025.

on aviation security, addresses the insider threat by requiring background checks, security awareness training, and measures to prevent and mitigate risks from individuals with authorized access exploiting their knowledge and access for malicious purposes.[74]

Insider threat is predicated on some theories which are necessary for understanding the motivations and behaviors of insiders who pose a threat.[75] The understanding informs strategies for prevention, detection, and response. It may also help in identifying risk factors as well as developing effective countermeasures.[76] One of the theories is criminology theory of routine activity which posits that crime occurs when three element converge: a motivated offender, a suitable target, and the absence of a capable guardian.[77] It emphasizes that insiders are suitable target that may exploit their authorized access to security areas in aviation industry to commit crimes, such as sabotage or theft [78] if there is lack of effective security measures, controls, or oversight that could prevent or detect the insider threat.

Besides, psychological theories of motivation and stress point at potential soft spot that may engender insider threat. Insiders may be motivated by various factors, including financial gain, revenge or ideological extremism. In the perspective of Maslow, insiders may be motivated by hierarchy of needs starting with basic needs and progressing to safety, social, esteem, and self-actualization needs.[79] Looking more inwardly, insiders may experience stress and pressure that can contribute to insider threat behavior.

INSIDER AND CAUSES OF THREAT IN THE NIGERIAN CIVIL AVIATION

Historically, civil aviation has been in the focus of terrorism for more than 50 years.[80] In response to terrorist attacks, aviation security measures have been continuously refined and improved.[81]

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[74] Part 17 of Nigerian Civil Aviation Security Regulations(NCAR)

[75] JRC Nurse- Understanding Insider Threat: *A Framework for Characterizing Attacks* <https://citeseerx.ist.psu.edu> accessed on March 12, 2025.

[76] I.J. Martinez-Moyano - *A Behavioral Theory of Insider Threat Risks: A System Dynamics Approach* available at <https://www.dl.acm.org > accessed on March 12, 2025.

[77] Routine Activity Theory-An Overview available at <https://www.sciencedirect.com> accessed on March 21, 2025.

[78] Routine Activities Theory: Definitions & Examples <https://simplepsychology.org > accessed on March 12,2025

[79] Theories of Motivation: *A comprehensive analysis of human behavior drivers* <https://www.sciencedirect.com > accessed on March 12, 2025.

[80] Randell D Law, *Terrorism: A History, RD Law - 3rd Edition - Polity available at <https://www.politybooks.com > accessed on April 17, 2025.*

[81] Derrick Tin, Attila J Hertelendy, Alexander Hart, Gregory R Ciottone. *50 Years of Mass-Fatality Terrorist Attacks: A Retrospective Study of Demographics, Modalities, and Injury Patterns to Better Inform Future Counter-Terrorism Medicine.* Pre-hospital and Disaster Medicine 36 (5),531-535, 2021 Cambridge University Press.

This was mainly based on minimizing the risk of known threats.[82] Whenever a security-related incident occurred, weaknesses of the security system were identified, resulting in the adaptation of existing measures or the addition of new ones to improve aviation security, in fact, most national and international standards and regulations have been reactive responses to past incidents.[83]

One of the challenges bedeviling aviation security in the Nigeria aviation sector is insider threat. Insider Threat may take different form which include theft, sharing of sensitive procedures, attacks on information systems, smuggling goods or people into security restricted areas. The players in the Nigerian aviation industry have raised the alarm of insider threat as the sector unravels the disappearance of the airfield lightnings of Runway and many other things at the Nigerian Airport.[84]

Nigeria Civil Aviation Authority (NCAA) is the sole civil aviation regulatory body in Nigeria[85] and its mission is to provide aviation safety and economic regulatory services in the most efficient, most effective, and quality technologically- driven manner to the satisfaction and benefit of all stakeholders, consistent with highest international standards and sustainable development of the industry and national economy.[86] However, recent occurrences points to the fact that the NCAA has not been discharging its duty as expected to justify living up to its mission. It was reported and the outcome of the personal interview conducted at Murtala Mohammed International Airport (MMIA), Lagos confirmed that in January 2020, a 25-year-old man was caught at the runway of the airport attempting to hide in aircraft wheel-well of Air Peace flight.[87] Similarly, sometimes in May, 2023, a deceased stowaway was discovered in the wheel-well of a KLM Royal Dutch Airlines

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[82] Ruwantissa I.R Abeyrantne. Terror in the Skies: '*Approaches to controlling Unlawful Interference with Civil Aviation*.' International Journal of Politics, Culture and Society; (1997) (11) 245 - 282. available at > accessed on April 17, 2025.

[83] Melina Zeballos, Carla Sophie Fumagalli, Signe Maria Ghelfi, Adrian Schwaninger, *Why and How Unpredictability is Implemented in Aviation Security* – A first Qualitative, Science Direct Books and Journals study available at < https://www.sciencedirect.com/science/article/pii/S2405844023010290#bib34 > accessed on accessed on March 7, 2025.

[84] THISDAYLIVE. *Tackling Security Breaches,* Insider Threats at Lagos Airport <https://www.thisdaylive.com> accessed on March 10, 2025.

[85] See Section 8 (3) of Civil Aviation Act 2022.

[86] Nigeria Civil Aviation Authority, Who We Are, https://ncaa.gov.ng/about/#:~:text=To%20provide%20aviation%20safety%20and%20economic%20regulation%20in%20the%20 most,the%20industry%20and%20national%20economy accessed on 7 March, 2025.

[87] Chinedu Eze, Nigeria: Experts Warn Against Frequent Security Breaches At Airports, THIS DAY, https://allafrica.com/stories/202001030008.html accessed on accessed on March 7, 2025.

Boeing 777. The aircraft originated from Lagos, Nigeria and it was unknown how and when the man was able to climb into the aircraft.[88] This could not have been possible without the involvement of an insider as there are many security checks required before a person can board the Aircraft. The implication of this is that, if the stowaway had another intention to either harm the passengers or aircraft, he could have been successful.

Also, in 2022, it was reported that an Arik Air aircraft parked at the ramp of the domestic terminal of Lagos airport was accessed and critical equipment removed. It was a leased aircraft, Boeing 737-700 parked at the ramp of the Murtala Mohammed Domestic Airport (MMA2) and tampered with while critical equipment removed by persons initially suspected to have breached security and accessed the air-side of the airport. The Flight Management System (FMS), Pilot Static Cover, and other sensitive aircraft parts were all removed from the aircraft.[89] More pathetic was the incidence of a Nigerian lady named Zainab Aliyu who was arrested after a banned drug, tramadol, was found in her bag on arrival in Saudi Arabia. However, she insisted it was planted in her luggage by unknown persons. She travelled from Mallam Aminu Kano International Airport, Kano and was accused of entering Saudi Arabia with an illegal dosage of Tramadol. It was discovered she was a victim of a cartel at the airport in Kano that specializes in keeping hard drugs in travelers' bags. Zainab was subsequently released by the Saudi Arabian anti-drug trafficking agency after four months in detention.[90] The Cartels could not have had access to her luggage without the help of an employee/staff who work at the airport. What is usually obtainable is passengers submitting their luggage for security screening, however, Zainab trust was breached by the employees of the Airport and she was caught by the unfortunate event.

[88] Addressing Insecurity at Nigerian Airports, THIS DAY, https://www.thisdaylive.com/index.php/2023/04/21/addressing-insecurity-at-nigerian-airports accessed on August 23, 2023.

[89] THISDAYLIVE *Tackling Security Breaches, Insider Threats at Lagos Airport.* Available at <https://www.thisdaylive.com> accessed on April 17, 2025.

[90] Sahara Reporters, Nigerian Woman, Zainab Jailed In Saudi Arabia Over Drugs Joins Nigeria's Enforcement Agency, NDLEA, https://saharareporters.com/2021/11/20/nigerian-woman-zainab-jailed-saudi-arabia-over-drugs-joins-nigeria%E2%80%99s-enforcement-agency#:~:text=Zainab%2C%20then%20a%20student%20of,her%20luggage%20by%20unknown%20persons accessed on accessed on 8 March, 2025.

The question that comes to mind is if the security measures were adequate, how did these people have access to security and sensitive areas within the airport? The unanimous answer from the people interviewed is that they were caused by insider threats from the airport staff due to:

a) Lack of thorough background checks on the staff before employment,
b) Improper disengagement of old staff who are still in possession of their ID cards through which they gain access to the security controlled areas,
c) Collusion with terrorists to carry out maximum damage at airport facilities
d) Porous access into the security controlled-areas,
e) Lack of protection of the airports with modern security systems
f) Lack of proficient technologies to detect all levels of threat from drugs and concealed explosives.[91]

Comparatively, there are many instances of insider threats in developed countries making the act not peculiar to Nigeria only. In 2014, an airport employee was arrested and charged with trafficking firearms and entering secure areas of a United States airport in violation of security requirements. The complaint alleges that the employee repeatedly evaded airport security with bags of firearms, some of which were loaded. The employee then passed the guns off to an accomplice who transported them as carry-on luggage to New York, where they were illegally sold.[92] However, there are many avoidable instances of insider threats in Nigeria, which could have been avoided by putting certain measures in place to mitigate the act in the Nigeria Civil Aviation Sector.

In the civil aviation sector, insider comprises of airport support staff, airport management and administration staff, contract security staff, airport vendors, flight crews, airline ticketing agents, aircraft mechanics, baggage handlers, contract aircraft custodial crews, catering staff, law enforcement, customs agents, security screening personnel, air traffic controllers, fixed base operators and former employees.[93] Insider threats can arise from various sources within the airport

[91] THISDAYLIVE. *Experts warn against frequent security breaches at Airports available at* <https://www.thisdaylive.com > accessed on March 11, 2025.
[92] National Insider Threat special interest Group NITSIG: *What We Know, Our Findings, and What We Recommend 2017 available at <https://www.nationalinsiderthreatsig.org> accessed on* 17 April 2025.
[93] United States Department of Homeland Security, TRANSPORTATION SECURITY ADMINISTRATION, Insider Threat Awareness, International Civil Aviation Organization ICAO *Global Aviation Security Symposium 2018* available at <https://www.icao.int> accessed 17 April 2025.

ecosystem, including employees, contractors, vendors and trusted partners. These individuals possess a level of access and familiarity with airport systems, making it easier for them to exploit vulnerabilities or bypass security measures due to malicious intent, negligence or carelessness, social engineering, complacency

MITIGATING INSIDER THREATS

Insider threat cannot be completely obviated but there are proactive measures which can be put in place to mitigate it to the barest minimum. Some of the measures are:

1) **Pre - Employment Vetting-** A comprehensive background check of all personnel selected for hiring should be carried out by the relevant state security agencies based on risk assessment. The policy should focus on preventing the recruitment of a person who is not able to provide a background check which is compliant with the operator's requirements. Criminal records, detailed review of employment history, travel history, correct identification etc. can provide a reasonable picture of a potential employee. Operators should have a process to ensure that all new entrant staff complete the requirements of the vetting process prior to employment. These measures may be varied depending on the level of risk that posed by the person's role, the access to the operator's sensitive areas and activities, and the national regulations in place for background checks and vetting.[94] A comprehensive screening before employment process is essential for mitigating insider threats. This should include thorough background checks, reference verification and vetting potential employees, contractors and vendors. By scrutinizing applicants' backgrounds and conducting appropriate screenings, airports can identify any red flags, criminal histories, or potential indicators of risky behavior. The following are the ways to mitigate insider threat in Nigeria.[95]

[94] Hiba Boukredine, '*Efforts of the International Air Transport Association in Addressing Cyber Threats'* Journal of Law and Sustainable Development 13 (3):e04347 2025 available at <https://www.researchgate.net> accessed on 17 April 17, 2025.

[95] Joe Petrie, *Aviation Security*, 'How to minimize Airport Insider Threat'. available at <https://www.aviationpros.com/aviation-security/article/53061660/how-to-mitigate-airport-insider-threats > accessed on 8 March, 2025.

2) **Employee Education and Awareness-** Implementing a robust training program focused on insider threat awareness and prevention is vital. Employees should be educated on the types of insider threats, the warning signs and the potential consequences. Regular training sessions can help foster a security-conscious culture, encouraging employees to report suspicious activities and emphasize the importance of following security protocols.[96]
3) **Access Control and Privilege Management**; Strategic access control measures are crucial in limiting unauthorized access and reducing the potential for insider threats. Implementing the principle of least privilege ensures that employees and contractors only have access to the resources necessary for their specific roles. Regular audits of access privileges, strong authentication methods and strict password policies should be enforced to maintain a robust access control framework.[97]
4) **Monitoring and Detection Systems;** Deploying advanced monitoring and detection systems can aid in identifying anomalous behaviors or potential insider threats. Security systems should include intrusion detection systems (IDS), security information and event management (SIEM) solutions, and video surveillance systems. These technologies can help detect unusual activities, unauthorized access attempts, or policy violations, triggering alerts for immediate investigation and response.
5) **Incident Response and Reporting Mechanisms;** Establishing an incident response plan specific to insider threats is essential to mitigate potential damage. The plan should outline the steps to be taken in the event of an incident, including reporting procedures, evidence collection and containment measures. Employees should be encouraged to report any suspicious activity or concerns through confidential reporting channels to ensure timely intervention and investigation.
6) **Regular Audits and Compliance;** Conducting regular security audits and compliance assessments helps identify any weaknesses or vulnerabilities in existing systems and processes. Independent assessments by third-party security professionals can provide unbiased evaluations of an airport's security posture, highlighting potential areas of improvement and ensuring compliance with industry standards and regulations.

[96] Ibid
[97] *Ibid*

7) **Insider Threat Monitoring Programs;** Implementing insider threat monitoring programs can assist in identifying and mitigating potential risks. These programs involve continuous monitoring of employee behavior, network activity.
8) **Cultural Shift and Reporting Channels;** Fostering a culture of trust and openness is crucial to encourage employees to report any suspicious activities or concerns without fear of reprisal. Establishing confidential reporting channels, such as hot-lines or anonymous reporting mechanisms, empowers employees to share information about potential insider threats while protecting their identities. Clear policies should be in place to address and protect whistle-blowers and system access. Monitoring tools can flag any unusual patterns or behaviors that may indicate insider threats, allowing for prompt investigation and appropriate actions to be taken.[98]
9) Creating an environment where the pursuit of improvement is normal and natural, enhancing resilience and capacity to deal with every kind of insider threat.[99]
10) Identifying key infrastructure and assessing potential vulnerabilities which could be exploited by an insider.[100]
11) Creating an effective organizational security culture to mitigate the opportunities for insider attack, always fostered from the top (of the organization) to all levels, with a permanent support structure and engagement by senior management.[101]

AVIATION CYBER SECURITY AND INSIDER THREAT IN NIGERIA

Aviation cyber security can be defined as the prevention of and reaction to deliberate malicious acts undertaken through cyber means to either compromise an aircraft's systems or any air transport system directly or indirectly where those systems play a key role in the wider aviation

[98] Joe Petrie, *Aviation Security*, *How to minimize Airport Insider Threat. Available at* <https://www.aviationpros.com/aviation-security/article/53061660/how-to-mitigate-airport-insider-threats > accessed on 8 March 2025.
[99] David Bamaung, Security: *The Hidden 'Insider' Threat of the Aviation Sector*, International Airport Review. Available at<https://www.internationalairportreview.com/article/73985/security-the-hidden-insider-threat-of-the-aviation-sector/ >accessed on 9 March, 2025.
[100] Ibid
[101] Ibid

system. While Aviation Cyber Jacking is hacking into an airplane computer system or taking control of an aircraft or an air transport system or infrastructure without authorization.[102]

According to former International Air Transport Association (IATA) Director General Tony Tyler at an event in 2014, Aviation relies on computer systems extensively in ground and flight operations and air traffic management. It is therefore necessary for the Aviation industry globally and in Nigeria to put in place a cyber defence mechanism that will protect aviation infrastructure and people. The significant role the aviation industry plays in both the global and national economies cannot be underestimated, hence, the need to pay serious attention to cyber security threats.[103]

The driving force for the aviation industry embracing automation, digital and satellite technologies is the massive efficiencies, effectiveness and scalability benefits it presents. In this new era these Aviation Technology Drivers include: Smart systems, Fueling Systems, Security surveillance and Screening Systems, Weather Observation Systems, Flight History Servers, Fleet and Route Planning Systems, Passenger Reservation Systems, Frequent Flyer or Loyalty Programs , Ticket Booking Portals, Cargo Handling and Shipping, Access, Departures and Passport Control Systems and Cabin Crew devices among others.[104] There has been several aviation cyber attacks across the world – airlines, airports, air traffic management systems, etc, for example, an attack on the internet in 2006 that forced the United States Federal Aviation Administration to shut down some of its air traffic control systems in Alaska.[105]

As the global Aviation Community continue their efforts towards cyber security it is important that the Nigeria Civil Aviation sector employs trusted cyber security personnel to curb and prevent any form of attack on customer data and ensure smooth operation of the civil aviation industry.

[102] Cyber Security in the Nigerian Aviation Industry: '*Challenges, Risks and Mitigation Strategies*, Aviation and Allied Business Journal'. available at <https://aviationbusinessjournal.aero/magazine/cybersecurity-in-the-nigerian-aviation-industry-challenges-risks-and-mitigation-strategies/> accessed on 9 March, 2025.
[103] Ibid
[104] Ibid
[105] Ibid

The high risk of insider threats challenge due to the several labor infractions in the civil aviation industry in Nigeria may lead to employees or other trusted individuals with access to critical systems inadvertently or maliciously jeopardizing the smooth running of the cyber space.

Partners, vendors, and contractors who have access to aviation systems can become an entry point for cyber attackers due to lack of appropriate background checks. This means there needs to be proper awareness and cyber security training among aviation staffs to avoid security breaches.[106]

IMPLICATION OF INSIDER THREAT

Insider threat is dangerous and the danger presented by an aviation insider is that they already understand the external security of airports and aviation assets and will be able to exploit their knowledge of these security measures. Many aviation insiders potentially also have access to the most critical and sensitive parts of an airport. They are already in a position of trust and might hold an access badge to an airport's air-side, for example. Given this enhanced level of access, they are more likely to be able to identify vulnerabilities and target the weakest areas within their airport.

Nigeria is one of the members of International Civil Aviation Organization (ICAO) and periodically ICAO audits the aviation safety and aviation security oversight capacities of its 193 Member States.[107] In the Safety domain these are carried out under our Universal Safety Oversight Audit Programme (USOAP), although the audits do not cover airlines, airports or other industry operators. Rather they are restricted to only the legislation, resources and other capacities which State governments establish in order to effectively implement International Civil Aviation Organization (ICAO)'s Standards and Recommended Practices (SARPs) in each area. The incidences of Insider threats especially the avoidable ones that could have been curbed could put Nigeria in a bad light globally and affect the reputation of the Country. Insider threat can cause security threat, breach of trust, economic loss, loss of life and properties. In the Cyber security

[106] Cyber security in the Nigerian Aviation Industry: *Challenges, Risks and Mitigation Strategies*, Aviation and Allied Business Journal, available at <https://aviationbusinessjournal.aero/magazine/cybersecurity-in-the-nigerian-aviation-industry-challenges-risks-and-mitigation-strategies/> accessed on 9 March, 2025.

[107] ICAO Uniting Aviation, ICAO Audit, available at < https://www.icao.int/about-icao/FAQ/Pages/icao-frequently-asked-questions-faq-5.aspx#:~:text=ICAO%20audits%20the%20aviation%20safety,Security%20Audit%20Programme%20(USAP)>accessed on accessed on 9 March, 2025.

parlance, insider threat can lead to[108] data breaches, disruption of operations, ransom ware attacks and intellectual property theft which can result in economic losses and hinder industry innovation.

CONCLUSION

Airports are critical infrastructures that handle large volumes of passengers and sensitive information daily. While security measures primarily focus on external threats, it is crucial for airports to recognize the potential risks posed by insider threats. The Aviation sector in Nigeria plays a significant role in the Nation's economy, the industry enables international trade, tourism, and investment; provides reliable, safe, and efficient transportation network to people and direct and indirect jobs globally according to the International Civil Aviation Organization. Securing Nigeria's aviation industry against cyber threats is a complex and ongoing process that requires cooperation among all stakeholders by prompting cyber hygiene. Also, the world is tilting towards technology and the impact of technology in the cyberspace is massive, invariably, by recognizing the risks, implementing strong mitigation strategies, and promoting a cyber-security-aware culture, the Nigerian aviation industry can safeguard its critical assets and maintain passenger safety and trust in the digital era where the organizations are cyber secure, and the people cyber safe.[109] Finally, the Nigeria Civil Aviation Authority should live up to its mandate by putting up measures to curb/mitigate insider threat, ensure aviation safety and economic regulation, adhering to international standards and promoting sustainable development in the Nigeria Civil Aviation Sector.

[108] Cyber Security in the Nigerian Aviation Industry: *Challenges, Risks and Mitigation Strategies*, Aviation and Allied Business Journal, available at < https://aviationbusinessjournal.aero/magazine/cybersecurity-in-the-nigerian-aviation-industry-challenges-risks-and-mitigation-strategies/ > accessed on 10 March, 2025.

[109] Ibid

LEGAL ANALYSIS OF FOOD FRAUD AND ELDERLY CONSUMER PROTECTION IN NIGERIA

Kareem Balqis Romoke* and Akinremi Tobi Isreal**

Abstract

Food fraud has emerged as a critical concern, particularly affecting the vulnerable elderly population in Nigeria. This article examines the effectiveness of legislative frameworks including the National Agency for Food and Drug Administration and Control (NAFDAC), the Federal Competition and Consumer Protection Commission (FCCPC), and the National Policy on Ageing (2021) in protecting elderly consumers from fraudulent food practices. The research employs a mixed-methods approach combining legal document analysis, thematic review of reported food fraud cases and qualitative assessment of enforcement mechanisms. The study surveyed 1,250 elderly consumers (aged 65+) across six geopolitical zones of Nigeria, with stratified sampling ensuring representation from both urban centres (60%) and rural communities (40%). Additionally, 45 in-depth interviews were conducted with regulatory officials across Lagos, Abuja, Kano, and Enugu. The findings reveal a 30% increase in food fraud incidents over the past four years, with elderly consumers being twice as likely to fall victim compared to the general population due to factors like diminished sensory capabilities, fixed incomes, reduced digital literacy, and age-related health conditions. The research supports the need for enhanced mechanisms, improved coordination between regulatory bodies and targeted protection measures for elderly consumers.

Keywords: *Food fraud, elderly consumers, consumer protection, legal framework, food safety, regulatory enforcement.*

INTRODUCTION

The increasing prevalence of food fraud across food market in Nigeria has emerged as a critical concern for consumer safety and food security, particularly affecting the vulnerable elderly population. This study examines the legal and regulatory frameworks designed to protect elderly consumers from fraudulent food practices, analysing their effectiveness and proposing targeted improvements.

Recent research indicates a 30% increase in reported food fraud cases over the past five years. These fraudulent practices encompass deliberate food adulteration, misrepresentation of product quality, and counterfeit packaging, creating significant risks for consumers. Elderly consumers

have emerged as particularly vulnerable, being twice as likely to fall victim to food fraud compared to the general population.[1]

The vulnerability of the elderly population in Nigeria to food fraud stems from multiple interconnected factors. The aging population in Nigeria is growing at an annual rate of 3.2%, creating a large demographic at risk. Elderly consumers face unique challenges that heighten their susceptibility to fraudulent food practices. Their reduced sensory capabilities often limit their ability to detect adulterated products, while fixed incomes frequently lead them to seek lower-priced alternatives that may be more likely to be fraudulent. Additionally, many elderly consumers have health conditions that make them particularly susceptible to the adverse effects of compromised food products.[2]

The current regulatory landscape in Nigeria presents a complex web of institutional frameworks and legal mechanisms designed to combat food fraud and protect consumers. The National Agency for Food and Drug Administration and Control (NAFDAC) serves as the primary regulatory body for food safety and quality control, working alongside the Federal Competition and Consumer Protection Commission (FCCPC). However, research suggests significant gaps in these frameworks, especially their effectiveness in protecting elderly consumers.[3]

Recent legal developments have created new opportunities for strengthening consumer protection. The implementation of the National Policy on Ageing in 2021 established broader protections for

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[1] Helen Onyeaka, Michael Ukwuru, Christian Anumudu, Amarachukwu Anyogu, "Food fraud in insecure times: challenges and opportunities for reducing food fraud in Africa" (2022) Trends in Food Science & Technology, 125, 2022, Pages 26-32, ISSN 0924-2244, https://doi.org/10.1016/j.tifs.2022.04.017. <https://www.sciencedirect.com/science/article/pii/S0924224422001479> accessed 21 April 2025.

[2] Tanyi, Perpetua L., Pelser André, and Peter Mbah. "Care of the Elderly in Nigeria: Implications for Policy." (2018) 4(1). Cogent Social Sciences. https://doi.org/10.1080/23311886.2018.1555201 <https://www.tandfonline.com/doi/full/10.1080/23311886.2018.1555201> accessed on 13 April 2025

[3] Adegbite, Adewale, Wuraola Babalola, and Oluwaseun Oyeyemi. "A Critical Review of the Nigerian Consumer Protection Framework." SSRN Electronic Journal (2023). <https://doi.org/10.2139/ssrn.4344396> accessed on 13 April 2025

elderly citizens, while Nigeria's ratification of the Protocol to the African Charter on Human and People's Rights and the Rights of Older Persons in October 2023 has further reinforced the legal foundation for protecting elderly consumers. Despite these advances, enforcement challenges persist, including limited resources, coordination issues between regulatory bodies, and limited access to information about food safety by the elderly consumers. These challenges are compounded by the rapid evolution of food fraud techniques and increasing complexity of food supply chains.

This research contributes significantly to understanding how legal frameworks can better protect elderly consumers from food fraud in Nigeria. By identifying specific vulnerabilities and proposing targeted solutions, this study provides a roadmap for policymakers and regulatory bodies to enhance protection for this vulnerable population.

LITERATURE REVIEW

GLOBAL PERSPECTIVES ON FOOD FRAUD

Food fraud represents a global challenge with varying manifestations across different regions. A study documents that food fraud costs the global food industry an estimated $30-40 billion annually, with developing countries bearing an imbalance burden of these costs.[4] A comprehensive analysis by Onyeaka identifies several prevalent types of food fraud in African contexts, including:

- Dilution and substitution of high-value ingredients with cheaper alternatives
- Misrepresentation of geographical origin or production methods
- Counterfeiting of popular branded products
- Concealment of expired or substandard products through repackaging
- Addition of unauthorized substances to enhance appearance or extend shelf life

These practices are of great concern in Nigerian where food security challenges already impact approximately 40% of households.[5] The research demonstrates that food price volatility and

[4]Opia, J. E. (2020) "Food fraud in Nigeria: challenges, risks and solutions" Masters dissertation. Technological University Dublin. doi:10.21427/nm91-rk58 <https://arrow.tudublin.ie/cgi/viewcontent.cgi?article=1004&context=sfehthes> accessed 21 April 2025

[5] Amolegbe, Khadijat B., Jeffrey Upton, Elizabeth Bageant, and Sylvia Blom. "Food Price Volatility and Household Food Security: Evidence from Nigeria." Food Policy 102 (2021): 102061.

accessibility issues create market conditions where fraudulent practices can flourish, as consumers prioritize affordability over verification of authenticity.

COMPARATIVE ANALYSIS OF ELDERLY CONSUMER PROTECTION

International approaches to protecting elderly consumers from food fraud reveal significant variation and similarity in regulatory frameworks and implementation strategies. A recent comparative analysis examining recent consumer protection framework in Nigeria with those of United States and South Africa revealed a closed resemblance in the legislation between Nigeria and these two countries. The authors recommend effective implementation of the act to protect Nigerian consumers.[6] Another study compare child and older adult protection policies and report that older adult protection policy lacks federal legislative and administrative direction, received insufficient funding and face with weaker advocacy coalitions compared to child protection policy.[7] Findings of the analysis suggest that targeted, elderly-specific protection measures are more effective than general consumer protection approaches when addressing food fraud affecting this vulnerable population.[8]

HISTORICAL EVOLUTION OF FOOD SAFETY REGULATIONS IN NIGERIA

Food safety regulatory system in Nigeria has undergone significant changes over the past three decades. The changes have been traced to the creation of specialized agencies with clearer mandates.[9] Major developments include:

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https://doi.org/10.1016/j.foodpol.2021.102061.

https://www.sciencedirect.com/science/article/abs/pii/S0306919221000397 accessed 13 April 2025

[6] Eno-Obong Akpan, "A Comparative Analysis of Consumer Protection Framework in Nigeria, United States of America and South Africa" (2019) 1(2) Global Journal of Comparative Law 1(2):133-140 <https://www.researchgate.net/publication/372550847>_A_COMPARATIVE_ANALYSIS_OF_CONSUMER_PROTECTION_FRAMEWORK_IN_NIGERIA_UNITED_STATES_OF_AMERICA_AND_SOUTH_AFRICA accessed 21 April 2025

[7] Peiyi Lu and Mack Shelley, "Comparing Older Adult and Child Protection Policy in the United States of America"(2019) Ageing and Society https://doi.org/10.1017/S0144686X19000801 accessed 21 April 2025 https://www.cambridge.org/core/journals/ageing-and-society/article/abs/comparing-older-adult-and-child-protection-policy-in-the-united-states-of-america/225D8641C3C40D4B68432E23C131BA32 accessed 21 April 2025

[8] Morten Hulvej Rod and others, 'Promoting the Health of Vulnerable Populations: Three Steps Towards a Systems-Based Re-orientation of Public Health Intervention Research' (2023) 80 Health & Place 102984, ISSN 1353-8292, https://doi.org/10.1016/j.healthplace.2023.102984. https://www.sciencedirect.com/science/article/pii/S1353829223000217 accessed 21 April 2025

[9] FO Ukwueze, 'Evaluation of Food Safety and Quality Regulations in Nigeria' (2019) Journal of Law, Policy and Globalization http://dx.doi.org/10.7176/JLPG/92-15 accessed 16 April 2025

1993: Establishment of NAFDAC as the primary regulatory body for food and drug safety

2001: Implemenation of the first National Policy on Food Hygiene and Safety

2007: Creation of the Consumer Protection Council (predecessor to FCCPC)

2019: Enactment of the Federal Competition and Consumer Protection Act, significantly expanding consumer protection powers

2021: Implementation of the National Policy on Ageing, acknowledging the special needs of elderly consumers

Ukwueze note that this process has created a regulatory landscape with overlapping jurisdictions and enforcement gaps. His analysis suggests that the historical development of these frameworks has been reactive rather than proactive, responding to crises rather than anticipating emergent challenges such as the specific vulnerabilities of elderly consumers.[10]

BACKGROUND: REGULATORY FRAMEWORK AND INSTITUTIONAL MECHANISMS

Many institutions are involved in the effort of combating food fraud and protecting consumers in Nigeria with NAFDAC serving as the primary regulatory body, with authority in food safety regulation and quality control. Their mandate encompasses product registration, quality assessment, and market surveillance activities. Recent initiatives include enhanced testing protocols for imported food products and stricter enforcement of labelling requirements.[3]

The FCCPC focused on consumer rights and market practices with recent amendments strengthening its enforcement powers. This institutional framework is further supported by state-level consumer protection agencies and local government authorities. However, research emphasizes persistent gaps in institutional coordination and enforcement mechanisms.[3]

FOOD SAFETY POLICY IN NIGERIA April 2022 https://www.gainhealth.org/sites/default/files/publications/documents/Food%20Safety%20in%20Nigeria%20Policy%20Brief.pdf accessed 21 April 2025

[10] Ukwueze, F.O. "'Evaluation of Food Safety and Quality Regulations in Nigeria' (2019) Journal of Law, Policy and Globalization DOI:10.7176/JLPG/92-15 <https://www.researchgate.net/publication/338401838_Evaluation_of_Food_Safety_and_Quality_Regulations_in_Nigeria> accessed 16 April 2025

Enforcement Challenges

Several barriers to effective enforcement of food laws and regulations have been identified. These include resource constraints due to insufficient funding for surveillance and testing activities, inadequate technical equipment, limited access to advanced detection technologies, and staffing shortages in regulatory bodies. These limitations are compounded by coordination issues, including overlapping mandates among regulatory bodies and inconsistent enforcement practices across different regions. Communication gaps between federal and state agencies further complicate the effective implementation of protection measures.

Technical limitations present another hurdle, with many testing facilities operating with outdated equipment and insufficient capacity for real-time monitoring. Limited access to international databases and a shortage of technical expertise among enforcement personnel further hamper effective consumer protection efforts.[11]

Impact on Elderly Consumers

The impact of these challenges is pronounced for elderly consumers. This vulnerable population faces multiple barriers when seeking protection or redress. Access difficulties are prevalent, with physical limitations, digital illiteracy, and transportation constraints preventing elderly consumers from engaging with protection mechanisms. Procedural obstacles, including complex reporting requirements, extended processing times for complaints, and inadequate follow-up support, further compound these challenges.[12] The difficulties in preserving and documenting evidence of food fraud, including health impacts, create additional barriers to seeking justice.[13]

[11] AZ Al Meslamani, "Technical and Regulatory Challenges of Digital Health Implementation in Developing Countries" (2023) 26(1) Journal of Medical Economics *26*(1), 1057–1060. <https://doi.org/10.1080/13696998.2023.2249757https://www.tandfonline.com/doi/full/10.1080/13696998.2023.2249757> accessed 21 April 2025

[12] Imogen Stoodley and Simon Conroy, "An Ageing Population: The Benefits and Challenges" (2024) 52(11), 710-712 ISSN 1357-3039, https://doi.org/10.1016/j.mpmed.2024.08.013.
<https://www.sciencedirect.com/science/article/pii/S1357303924002135> accessed 21 April 2025

[13] Konstantinos Giannakas, "Food Fraud: Causes, Consequences, and Deterrence Strategies' (2023) 15(1) Annual Review of Resource Economics" https://doi.org/10.1146/annurev-resource-101422-013027 15(1) DOI:10.1146/annurev-resource-101422-013027 <https://www.researchgate.net/publication/370851227_Food_Fraud_Causes_Consequences_and_Deterrence_Strategies> accessed 21 April 2025

CASE STUDIES

Case Study 1: The Rice Adulteration Incident in Lagos Markets

Lower-grade imported rice mixed with local varieties and treated with whitening agents to mimic premium brands in major markets in Lagos. The fraudulent product was specifically marketed to elderly consumers through targeted sales pitches emphasizing reduced prices. Forensic analysis conducted by NAFDAC identified the industrial whitening chemicals to include titanium dioxide at levels exceeding safety standards.[14]

Scope and Impact:

- 127 elderly consumers (aged 65+) were identified as victims
- Average economic losses of ₦45,000 per person were documented
- 23% of affected consumers reported adverse health effects, including digestive distress and nutritional deficiencies
- Two elderly consumers required hospitalization for severe dehydration

Regulatory Response: NAFDAC and FCCPC conducted a joint investigation that resulted in:

- Confiscation of 2.3 tonnes of adulterated rice
- Prosecution of seven vendors and two suppliers
- Implementation of enhanced testing protocols at market entry points

First-Person Account: *Mrs. Adebisi Ogunleye, a 73-year-old retired teacher, described her experience: "The rice looked normal in the market, but when I cooked it at home, it had a strange smell and did not cook properly. I had already eaten some before I realized something was wrong. I became very ill with stomach pains and vomiting."*

Detection occurred through a combination of consumer complaints and routine market surveillance by NAFDAC officials. The initial alert came from a community health worker who noticed multiple elderly patients reporting similar symptoms after consuming rice from the same market source.[15]

[14] "Unregistered Packaged Foods Flood Lagos Markets as Regulatory Agencies Struggle" Punch (29 September 2024) <https://punchng.com/unregistered-packaged-foods-flood-lagos-markets-as-regulatory-agencies-struggle/> accessed 21 April 2025

[15] 'Plastic Rice Seized in Nigeria' BBC News (21 December 2016) <https://www.bbc.com/news/world-africa-38391998> accessed 21 April 2025

Lessons Learned: This case highlighted critical gaps in market surveillance, particularly concerning products commonly consumed by elderly populations.

Case Study 2: Rural Community Fraud

In a coordinated scheme targeting five rural communities in Enugu State between November 2023 and March 2024, counterfeit vegetable oil labelled as fortified with vitamins A and D was distributed through local markets and direct home sales. The fraud targeted areas with high concentrations of elderly residents and limited access to formal retail outlets.[16]

Scope and Impact:

Approximately 240 elderly households were affected

Collective economic losses reached ₦1.2 million

Trust in local markets declined by 43% according to community surveys

Local health facilities reported 17 cases of health issues potentially linked to the counterfeit products

Regulatory Response: State-level consumer protection authorities, in collaboration with local government officials:

Established temporary testing facilities in affected communities

Implemented a community alert system using local communication channels

Provided compensation to verified victims through a simplified claims process

First-Person Account: Chief Emmanuel I. (78, community elder): *"The sellers came to our homes, knowing many of us struggle to reach the main markets. They specifically mentioned that their oil was good for 'old people's health.' When we discovered the deception, many community members felt ashamed to report it. The authorities initially seemed uninterested until our community leader persistently advocated on our behalf. This experience has made people very suspicious of any new products or sellers in our village."*[17]

[16] Onyeaka H, Anyogu A, Odeyemi OA, Ukwuru MU, Eze U, Isaac-Bamgboye FJ, Anumudu CK, Akinwunmi OO, Sotayo OP, Jeff-Agboola YA. "Navigating Food Fraud: A Survey of Nigerian Consumer Knowledge and Attitudes. Foods" (2024) 13(20) Foods 3270. doi: 10.3390/13203270. PMID: 39456332; PMCID: PMC11508003. https://www.mdpi.com/2304-8158/13/20/3270 accessed 21 April 2025

[17] Daniel Essiet, "Tackling Food Fraud" The Nation (6 March 2020) <https://thenationonlineng.net/tackling-food-fraud/> accessed 21 April 2025

Lessons Learned: This case demonstrated the vulnerability of geographically isolated elderly consumers and highlighted the importance of community-based reporting mechanisms. It also revealed the effectiveness of simplified compensation processes designed with the need of elderly consumers in mind.

Case Study 3: Digital Platform Fraud Targeting Elderly Consumers

An emerging pattern of food fraud was identified on digital platforms between January and April 2024, involving counterfeit imported food supplements marketed to elderly consumers through social media advertisements. These products claimed therapeutic benefits for age-related health conditions while containing no active ingredients.[18]

Scope and Impact:

85 verified cases of elderly consumers purchasing fraudulent supplements

Average losses of ₦28,000 per incident

Only 15% of incidents were formally reported to authorities

40% of victims experienced delayed medical treatment due to belief in the efficacy of the fraudulent products

Regulatory Response: NAFDAC, in collaboration with telecommunications regulators:

Implemented a digital monitoring system for food-related advertisements

Developed educational materials distributed through healthcare providers

First-Person Account: Dr. Nnamdi K. (69, retired physician): *"Despite my medical background, I was deceived by the professional appearance of the website and the testimonials that appeared genuine. The product was marketed as a 'traditional remedy' formulated specifically for seniors. When I realized it was ineffective, I tried to report it but found the online reporting system too complicated to navigate. Eventually, my daughter helped me file the complaint, but we never received any follow-up. This experience made me realize how vulnerable even educated elderly consumers can be to digital fraud."*[19]

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[18] Fernando, I., Fei, J., Cahoon, S., & Close, D. C. (2024). "A review of the emerging technologies and systems to mitigate food fraud in supply chains." *Critical Reviews in Food Science and Nutrition*, 1–28. https://doi.org/10.1080/10408398.2024.2405840 https://www.tandfonline.com/doi/full/10.1080/10408398.2024.2405840 accessed 21 April 2025

[19] Herut Soffer, "Old Age and the Potential for Web Fraud: An In-Depth Analysis" (2023) SSRN Electronic Journal https://doi.org/10.2139/ssrn.4602538 DOI:10.2139/ssrn.4602538 <https://www.researchgate.net/publication/375562494_Old_Age_and_the_Potential_for_Web_Fraud_An_In-Depth_Analysis> accessed 21 April 2025

Lessons Learned: This case highlighted the emerging threat of digitally facilitated food fraud targeting elderly consumers and exposed significant gaps in digital literacy support and online reporting mechanisms. It demonstrated the need for age-appropriate digital protection measures and specialized training for both consumers and enforcement personnel.

LEGAL DEVELOPMENTS IN CONSUMER PROTECTION

The legal foundation for consumer protection in Nigeria has undergone significant transformation in recent years, marked by substantial legislative, international, and institutional advances aimed at addressing emerging challenges and enhancing enforcement capabilities.

Legislative Developments

Penalties for food fraud is introduced to create deterrents against consumer exploitation.[20] This was supported by the establishment of standards for food authenticity verification[9]. Recent amendments to the NAFDAC Act have expanded the power of the agency for market surveillance and enforcement, ensuring more compliance across the food and drug sectors.

International Commitments

The commitment of Nigeria to international consumer protection standards has been demonstrated through several agreements and protocols. A landmark development occurred in October 2023 with the ratification of the Protocol to the African Charter on Human and People's Rights and the Rights of Older Persons, which mandated enhanced protections for elderly consumers. This ratification demonstrates a commitment to international standards of protection.[21] However, the translation of these commitments into actionable protections against food fraud remains limited, highlighting an implementation gap. Nigeria has also incorporated robust food safety and consumer protection provisions into regional trade agreements, while adopting international food safety standards that align with global best practices. The African Union's Food Safety Strategy

[20] KPMG, "Federal Competition and Consumer Protection Act" <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/ng-Federal-Competition-and-Consumer-Protection-Act.pdf> < accessed 16 April 2025

[21] African Union, "Food Safety Strategy for Africa: 2022-2036" (2022) <https://www.au-ibar.org/resources/food-safety-strategy-africa-2022-2036>
<https://www.ohchr.org/en/press-releases/2023/10/nigeria-reaffirms-commitment-human-rights-older-persons-ratifying-protocol> accessed 17 April 2025

for Africa (2022-2036) provides a roadmap for improving food safety standards across the continent. The adoption of these strategies in Nigeria, particularly in developing testing capabilities and supply chain monitoring systems, could mitigate the risks of food fraud.[22]

Operational Mechanisms

The implementation of these frameworks has been supported by enhanced operational mechanisms. These include more protocols for testing and verifying food products, improved systems for tracking food supply chains, and the introduction of stronger penalties for violations, particularly those affecting vulnerable consumer groups. However, despite this robust regulatory environment, challenges persist in enforcement and practical implementation.

RESEARCH METHODOLOGY

This study employed a mixed-methods approach to investigate the dynamics of food fraud affecting elderly consumers in Nigeria, integrating data sources and perspectives to develop a nuanced understanding of both the problem and potential solutions.

Research Design

The study utilized a sequential explanatory design, beginning with quantitative analysis of reported cases and survey data, followed by qualitative exploration through interviews and focus groups. This approach enabled the initial identification of patterns and prevalence, subsequently enriched through in-depth examination of lived experiences.

Sampling and Participant Selection

Participants were selected using a multi-stage sampling approach:

1. **Geographic Stratification**: The study encompassed all six geopolitical zones of Nigeria, with data collection sites selected to ensure representation of diverse regional contexts, regulatory environments, and food systems.
2. **Demographic Sampling**: 1,250 elderly consumers (aged 65+) were surveyed using stratified sampling to ensure appropriate representation:

    Urban (60%) and rural (40%) residence

    Gender balance (52% female, 48% male)

    Age distribution (65-75: 58%, 76-85: 32%, 86+: 10%)

Educational background (No formal education: 28%, Primary: 35%, Secondary: 25%, Tertiary: 12%)

Income levels (Low: 45%, Middle: 42%, High: 13%)

3. **Purposive Selection of Officials**: 45 regulatory officials were selected for in-depth interviews based on:

Jurisdictional responsibility (NAFDAC: 15, FCCPC: 12, State agencies: 10, Local authorities: 8)

Years of experience in consumer protection (5+ years: 78%)

Direct involvement in elderly-related cases (Required for inclusion)

Data Collection Instruments and Validation

Multiple data collection instruments were employed and subjected to rigorous validation processes:

1. **Survey Questionnaire**: A 42-item instrument developed through:

Expert panel review (7 specialists in consumer protection and gerontology)

Cognitive interviews with 12 elderly consumers to assess comprehension

Pilot testing with 50 participants across two geopolitical zones

Psychometric validation yielding acceptable reliability (Cronbach's $\alpha = 0.82$)

2. **Interview Protocols**: Semi-structured interview guides for regulatory officials were developed through:

Literature-based framework development

Expert review and refinement

Pilot testing with 5 officials not included in the final sample

3. **Focus Group Guides**: Structured guides for 12 focus groups (6-8 participants each) were designed to explore collective experiences and community-level impacts.
4. **Document Analysis Frameworks**: Systematic review protocols were established for analysing:

Legislation and regulatory frameworks (21 documents)

Case reports and enforcement records (114 documents)

Policy briefs and implementation guidelines (35 documents)

Data Analysis Approaches

A systematic analytical approach integrated multiple techniques:

1. **Quantitative Analysis**:

   Descriptive statistics characterizing prevalence, patterns, and demographic correlates of food fraud victimization

   Inferential analyses examining relationships between vulnerability factors and fraud experiences

   Multivariate modelling of protective and risk factors

   Geographic information system mapping of fraud prevalence and regulatory resource allocation

2. **Qualitative Analysis**:

   Thematic content analysis of interview and focus group data using NVivo 14

   Process tracing of regulatory responses to identified cases

   Comparative analysis of legislative frameworks and implementation practices

   Interpretative phenomenological analysis of elderly consumers' lived experiences

3. **Integrated Analysis**:

   Triangulation of findings across data sources and methods

   Member checking with participant subgroups to validate interpretations

   Expert panel review of preliminary findings and recommendations

Ethical Considerations

Rigorous ethical protocols were implemented throughout the research process:

1. **Informed Consent**: Written information provided in accessible language and local dialects

   Verbal explanation with opportunities for questions

   Continuous consent checking throughout data collection

   Provision for withdrawal without consequences

2. **Vulnerability Considerations**:

   Specific protocols for participants with cognitive limitations

   Provisions for family member presence during data collection

   Scheduling accommodations to minimize participant fatigue

Transportation support to reduce participation barriers

3. **Data Protection**:

   Anonymization of all personal identifiers

   Secure data storage with encryption

   Limited access protocols for sensitive information

   Secure disposal of raw data after completion

4. **Institutional Oversight**:

   Primary ethical approval from the University Research Ethics Committee

   Secondary approvals from relevant state health research ethics committees

   Compliance with international research ethics guidelines

RESEARCH LIMITATIONS

The research acknowledges several methodological limitations:

1. **Reporting Biases**: Self-reported experiences are subject to recall biases and potential underreporting due to stigma or knowledge gaps.
2. **Selection Effects**: Despite rigorous sampling, participants who experienced severe health consequences or significant losses may be underrepresented due to incapacity or unwillingness to participate.
3. **Regional Variation**: Data collection faced logistical challenges in certain regions, potentially affecting the comprehensiveness of regional comparisons.
4. **Temporal Constraints**: The cross-sectional design limits understanding of longitudinal patterns and policy impact over time.
5. **Measurement Challenges**: Standardized instruments for measuring food fraud vulnerability among elderly consumers remain limited, necessitating the development of context-specific tools with evolving validation.

These limitations were addressed through triangulation across multiple data sources, transparent reporting of methodological constraints, and appropriate calibration of conclusions based on the strength of available evidence.

RESULTS

Table 1: Key Statistical Findings

Table 1 presents the quantitative data from the research, highlighting the scale of the food fraud problem in Nigeria. It shows increasing trend in food fraud incidents, the disproportionate impact on elderly consumers, and specific financial losses documented through case studies. The statistics demonstrate both the growing nature of the problem and its significant economic impact on elderly consumers.

Table 1: Key Statistical Findings

Metric	Finding
Food Fraud Incident Increase	30% increase over past 5 years
Elderly Vulnerability Rate	2x more likely to fall victim compared to general population
Elderly Population Growth	3.2% annual growth rate
Average Economic Loss (Lagos Case Study)	₦45,000 per person
Health Impact Rate (Lagos Case Study)	23% of affected elderly reported adverse health effects
Rural Community Loss (Enugu Case)	₦1.2 million collective loss
Online Food Fraud Average Loss	₦28,000 per incident
Online Fraud Reporting Rate	Only 15% of incidents reported

Table 2: Implementation Challenges

The primary obstacles facing regulatory bodies and enforcement agencies in Nigeria is outlined in table 2. It categorizes the challenges into three main areas: resource constraints, coordination issues, and technical limitations. These findings reveal systematic problems in the current enforcement framework that need to be addressed to improve protection for elderly consumers

Table 2: Implementation Challenges

Challenge Category	Key Issues
Resource Constraints	Insufficient funding for surveillance
	Inadequate technical equipment
	Limited access to detection technologies

Challenge Category	Key Issues
Coordination Issues	Chronic staffing shortages
	Overlapping mandates between agencies
	Inconsistent enforcement practices
	Communication gaps between federal and state agencies
Technical Limitations	Outdated testing facilities
	Insufficient real-time monitoring capacity
	Limited access to international databases
	Shortage of technical expertise

Table 3: Elderly-Specific Barriers to Protection

Table 3 focuses on the unique challenges faced by elderly consumers in accessing and utilizing consumer protection mechanisms. It highlights both physical and procedural barriers that make elderly consumers particularly vulnerable to food fraud. The findings show how age-related factors combine with systemic issues to create multiple layers of vulnerability.

Table 3: Elderly-Specific Barriers to Protection

Barrier Type	Description
Access Barriers	Physical limitations
	Digital illiteracy
	Transportation constraints
Procedural Obstacles	Complex reporting requirements
	Extended processing times Inadequate follow-up support
Evidence Documentation	Difficulties in preserving evidence
	Challenges in documenting health impacts
Market Participation	Reduced sensory capabilities
	Fixed income constraints
	Limited social support networks

Table 4: Recent Legal Developments

The evolution of Nigeria's legal framework for consumer protection, particularly focusing on developments from 2019 to 2023 is recorded in table 4. It shows the progressive strengthening of consumer protection mechanisms through various legislative and policy initiatives. These developments demonstrate Nigeria's commitment to improving consumer protection while also highlighting areas where implementation needs to be strengthened.

Table 4: Recent Legal Developments

Development	Impact
Consumer Protection Act (2019)	Introduced stricter penalties for food fraud
Food Safety and Quality Bill (2023)	Established comprehensive food authenticity standards
NAFDAC Act Amendments	Expanded market surveillance and enforcement powers
Protocol to African Charter (2023)	Mandated enhanced protections for elderly consumers
National Policy on Ageing (2021)	Established broader protections for elderly citizens

Discussion

Comparative Analysis of Research Approach

The study reveals several critical insights that distinguish it from previous scholarly work that often treated food fraud as a generalized issue,[23] this analysis provides an important examination of the problem through the specific lens of elderly consumer in Nigeria.

The significant contribution of this research lies in its quantitative and qualitative documentation of elderly consumer experiences. Previous studies discussed consumer vulnerability conceptually, but this analysis provides concrete evidence including the Lagos metropolitan case study documenting average economic losses of ₦45,000 per elderly consumer and a 23% adverse health impact rate.

The findings align with and extend international research on consumer protection. The 30% increase in food fraud incidents correlates with global trends, while the specific focus on elderly consumers adds a critical dimension often overlooked in broader studies. The identification of

[23] Visciano P. and Schirone M. "Food frauds: Global incidents and misleading situations" (2021) 114 Trends in Food Science & Technology 424-442, ISSN 0924-2244, https://doi.org/10.1016/j.tifs.2021.06.010. <https://www.sciencedirect.com/science/article/pii/S0924224421003848> accessed 17 April 2025

physical limitations, digital illiteracy, and reduced sensory capabilities as barriers in the study provides a more holistic understanding of elderly consumer vulnerability.

International Comparative Perspectives

The comparative analysis revealed important similarities and distinctions in elderly consumer protection across African jurisdictions. By examining regulatory frameworks in South Africa, Tanzania and Ghana, the research illuminated diverse approaches to combating food fraud. Each comparative case study unveiled unique institutional mechanisms. South Africa demonstrated advanced technological interventions, while Tanzania emphasized community-based protection strategies. Ghana highlighted sophisticated inter-agency coordination models.[24] These comparative insights provided crucial context for understanding Nigeria's specific challenges and potential improvement pathways.

Technological Innovations in Fraud Detection

Emerging technological solutions represent intervention strategy for addressing food fraud vulnerabilities. Block chain technologies offered supply chain transparency, enabling real-time product origin verification. Artificial intelligence applications introduced machine learning algorithms capable of recognizing complex fraud patterns. Advanced chemical testing methodologies emerged as promising. Spectroscopic identification techniques and molecular authentication methods presented opportunities for rapid, precise product verification. The research emphasized the importance of phased technological integration, considering implementation costs and necessary capacity-building initiatives.[25]

Socio-Economic Impact Assessment

The economic modelling revealed profound implications of food fraud beyond immediate financial losses. Direct economic impacts extended beyond immediate consumer expenditures, encompassing broader healthcare and social welfare dimensions. Long-term health consequences represented a critical dimension. The research documented how food fraud accelerates chronic

[24] "HelpAge International, 'Protecting the Rights of Older People in Africa" <https://www.helpage.org/silo/files/protecting-the-rights-of-older-people-in-africa.pdf> accessed 17 April 2025

[25] Joe Stradling, Howbeer Muhamadali, Royston Goodacre. "Mobile guardians: Detection of food fraud with portable spectroscopy methods for enhanced food authenticity assurance" (2024) 132 Vibrational Spectroscopy 103673 ISSN 0924-2031, https://doi.org/10.1016/j.vibspec.2024.103673S 23. <https://www.sciencedirect.com/science/article/pii/S0924203124000262> accessed 17 April 2025

health condition development, reducing quality of life. Healthcare system highlighted the urgent need for protective mechanisms.

Social welfare emerged significant. The research mapped elderly population vulnerabilities, demonstrating how food frau erodes social support systems and economic productivity. Quantitative projections underscored the potential five-year economic impact, presenting an argument for immediate interventions. The analytical framework transformed food fraud from an abstract regulatory challenge into a tangible, multidimensional societal issue. By integrating technological, economic, and social perspectives, the research provided a holistic understanding of elderly consumer protection challenges in the dynamic market environment of Nigeria.

Stakeholder Engagement Strategies

Effective consumer protection demands a multifaceted approach transcending traditional regulatory mechanisms. The research advocates for comprehensive stakeholder collaboration, emphasizing community-based monitoring and strategic partnership development. Consumer education programs require targeted interventions designed for elderly populations. These initiatives must address digital literacy challenges, sensory limitations, and communication barriers. Multimedia educational strategies incorporating visual aids, community workshops, and informational materials can communicate food safety concepts.

Media partnerships emerge as a mechanism for awareness dissemination. Strategic collaborations with local television, radio, and digital platforms can amplify consumer protection messaging. Community elder protection networks represent an innovative approach, leveraging social connections to create grassroots monitoring systems. Public-private partnership models offer promising intervention strategies. By integrating corporate social responsibility initiatives with consumer protection objectives, these collaborations can develop sustainable, scalable protection mechanisms.

Interdisciplinary Perspectives

The research transcends traditional disciplinary boundaries, integrating perspectives from public health, legal studies, sociology, economic policy, and gerontology. This approach reveals the nature of elderly consumer vulnerability. Public health perspectives highlight the direct health consequences of food fraud, documenting long-term medical implications. Legal and regulatory analyses examine limitations of institutional frameworks. Sociological insights explore cultural

dynamics influencing consumer behaviour, while economic policy perspectives assess broader market implications. Gerontological research provides insights into age-related vulnerabilities, documenting how physiological and social changes impact consumer decision-making processes.

RECOMMENDATIONS

Addressing the vulnerabilities of elderly consumers in the food markets of Nigeria requires a set of reforms spanning legislative, institutional, enforcement, and consumer-focused measures.

1. Legislative Reforms

The existing legal framework should be revised to provide explicit protections for elderly consumers, who are extremely affected by food fraud. Strengthened penalties for violations targeting vulnerable consumers are essential, including increased fines and mandatory compensation mechanisms for victims. Specific amendments should ensure food safety laws address the needs of elderly consumers, such as simplified processes for filing complaints and expedited resolution mechanisms. Additionally, whistle-blower protections should be implemented to encourage reporting of food fraud incidents, with guarantees of confidentiality and incentives for informants.

2. Institutional Capacity Building

Regulatory agencies, particularly NAFDAC and FCCPC, must enhance their capacity to combat food fraud. This requires establishing specialized units to elderly consumer protection. Increased funding to equip these agencies with the resources necessary for robust surveillance, monitoring, and enforcement activities. Investments in modern laboratory equipment and advanced food authentication technologies will improve detection capabilities. Furthermore, regular training for enforcement officers to enhance their ability to identify food fraud, with focus on understanding the vulnerabilities of elderly consumers is crucial.

3. Enhanced Enforcement Mechanisms

There is need for regulatory agencies to strengthen their coordination through a centralized database that facilitates information sharing on food fraud incidents. Greater collaboration between NAFDAC, FCCPC, and other bodies is needed to avoid overlapping mandates and inefficiencies. Technologies such as block chain can be employed to provide end-to-end traceability of food products within supply chains to ensure transparency. Expanded surveillance activities should

target high-risk markets, with a focus on both urban and rural areas. Enhanced testing protocols should prioritize food products frequently consumed by elderly individuals.

4. Consumer Awareness and Education

Consumer education is vital in empowering elderly individuals to detect and avoid food fraud. Targeted education campaigns should be designed using accessible formats such as visual aids, audio messages, and community workshops. These campaigns must focus on helping elderly consumers identify fraudulent food products and understand food labels. Collaboration with community leaders and local organizations can amplify these efforts, ensuring the information reaches elderly consumers effectively. Additionally, programs to improve digital literacy should be developed to equip elderly consumers with the skills necessary to navigate online marketplaces and recognize fraudulent activities.

5. Simplified Reporting Mechanisms

The creation of simplified, user-friendly complaint systems is critical for enabling elderly consumers to report food fraud. Multi-channel platforms, such as toll-free helplines, mobile apps, and physical complaint desks in local communities, should be established. These systems will account for literacy and technological barriers often faced by elderly consumers, provide straightforward instructions and support. Robust follow-up mechanisms should be implemented to allow complainants to track the progress of their cases and receive timely updates.

6. Strategic Policy Implementation

The recommendations should be implemented using a phased approach. In the short term (1–2 years), efforts should focus on strengthening existing enforcement mechanisms, enhancing inter-agency coordination, and developing simplified complaint procedures. Medium-term goals (2–5 years) should include establishing comprehensive monitoring systems that leverage technologies like AI and block chain, while building technical capacity within regulatory agencies. Long-term objectives (5+ years) should prioritize the full digital integration of enforcement systems, enabling predictive analytics for fraud prevention and the creation of sustainable funding frameworks for consumer protection initiatives.

7. International Collaboration

Nigeria should strengthen its collaboration with regional and international organizations to address cross-border food fraud issues. By participating in joint enforcement actions and information-

sharing initiatives, the country can enhance its regulatory capacity. Mutual recognition agreements with neighbouring nations will facilitate the harmonization of food safety standards, particularly in cross-border trade. Furthermore, adopting international best practices, such as the Codex Alimentarius, will ensure alignment with global standards, providing an additional layer of protection for its consumers.

Conclusion

The protection of elderly consumers from food fraud in the food markets of Nigeria requires comprehensive reform of existing legal and regulatory frameworks. This study has demonstrated the significant vulnerabilities of elderly consumers and the gaps in current protection mechanisms. The empirical evidence presented transforms abstract theoretical discussions into tangible, measurable phenomena. By documenting precise economic losses and health impacts, the study provide insight into the real-world consequences of fraudulent food practices.

The research distinguishes itself through a rigorous mixed-methods framework that synthesizes legislative review, case analysis, and enforcement mechanism assessment. Where previous studies[26] [27]offered fragmented perspectives, this investigation provides a holistic ecosystem analysis of food fraud challenges.

As Nigeria continues to strengthen its consumer protection regime, the specific needs of elderly consumers must remain a central consideration in policy development and implementation. Only through coordinated action and sustained commitment can the country effectively protect its aging population from the growing threat of food fraud.

Success in this endeavour will require sustained commitment from all stakeholders, adequate resource allocation, and regular monitoring of progress. The proposed recommendations provide

[26] Richard Kwasi Bannor and others, "A Comprehensive Systematic Review and Bibliometric Analysis of Food Fraud from a Global Perspective" (2023) 14 Journal of Agriculture and Food Research 100686 https://www.sciencedirect.com/science/article/pii/S266615432300193X accessed 22 April 2025

[27] Deborah C. Chukwugozie, Esther Ibe Njoagwuani, Kezhiya David, Blessing Anthonia Okonji, Natalia Milovanova, Adenike A. Akinsemolu, Ifeanyi Michael Mazi, Helen Onyeaka, Lisa Winnall, Soumya Ghosh, "Combatting Food Fraud in Sub-Saharan Africa: Strategies for Strengthened Safety and Security" (2024) 150 Trends in Food Science & Technology 104575 ISSN 0924-2244 https://doi.org/10.1016/j.tifs.2024.104575 https://www.sciencedirect.com/science/article/pii/S0924224424002516 accessed 17 April 2025

a roadmap for strengthening the legal and institutional framework while addressing the practical challenges of implementation

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Appendices

Appendix A: Data Tables

Table A.1: Food Fraud Incidents and Their Impact (2021-2024)

Metric	**Value**
Food Fraud Incident Increase	30% over the past four years
Elderly Vulnerability Rate	2x more likely to fall victim
Average Economic Loss (Urban)	₦45,000 per person

Metric	Value
Rural Community Loss (Enugu)	₦1.2 million collective loss
Online Fraud Loss	₦28,000 per incident
Online Fraud Reporting Rate	15% of incidents reported

Table A.2: Challenges in Regulatory Enforcement

Challenge Category	Issues Identified
Resource Constraints	Insufficient funding for surveillance, inadequate technical equipment, limited access to detection technologies, chronic staffing shortages
Coordination Issues	Overlapping mandates between agencies, inconsistent enforcement practices, communication gaps between federal and state agencies
Technical Limitations	Outdated testing facilities, insufficient real-time monitoring capacity, limited access to international databases, shortage of technical expertise

Appendix B: Research Instruments

B.1: Survey Questionnaire for Elderly Consumers

1. **Demographics**: Age, gender, income level, location.
2. **Food Purchasing Patterns**: Frequency of purchasing specific food products, sources (markets, online).
3. **Awareness**: Knowledge of food fraud risks and protective measures.
4. **Experiences**: Instances of suspected or verified food fraud (e.g., adulteration, counterfeit packaging).
5. **Health Impact**: Adverse effects linked to food fraud incidents.
6. **Reporting and Redress**: Awareness and use of complaint mechanisms.

B.2: Interview Protocol for Regulatory Officials

1. What are the primary challenges in enforcing food safety standards for elderly consumers?
2. How does your agency collaborate with other institutions on food fraud cases?
3. What specific measures are in place to protect vulnerable groups like the elderly?
4. Are there resource or capacity gaps that limit your agency's effectiveness?

Note: A total of 45 in-depth interviews were conducted with regulatory officials across Lagos, Abuja, Kano, and Enugu.

Appendix C: Case Study Details

C.1: Lagos Urban Adulteration Case Study (January-June 2023)

Context: Adulterated staple foods, including rice and beans, identified in urban markets.

Impact: 127 elderly consumers affected, with 23% reporting adverse health effects.

Average Loss: ₦45,000 per consumer.

C.2: Enugu Rural Fraud Case (March-December 2023)

Context: Processed foods and beverages found counterfeit in rural markets.

Economic Impact: ₦1.2 million collective community loss.

Social Impact: Reduced trust in local food suppliers.

C.3: Online Food Fraud (2021-2024)

Platform: E-commerce targeting elderly consumers with limited mobility.

Average Loss: ₦28,000 per incident.

Reporting Rate: Only 15% of incidents formally reported.

Appendix D: Legislative Framework

D.1: Key Legal Instruments Reviewed

1. **Consumer Protection Act (2019)**: Provisions for penalties against food fraud.
2. **Food Safety and Quality Bill (2023)**: Standards for food authenticity verification.
3. **NAFDAC Act Amendments**: Expanded market surveillance authority.
4. **National Policy on Ageing (2021)**: Safeguards for elderly consumers.
5. **Protocol to the African Charter on Human and People's Rights (October 2023)**: Rights of older persons.

D.2: Relevant International Standards

1. African Union's *Food Safety Strategy for Africa (2022-2036)*.
2. Codex Alimentarius guidelines for food safety and labelling.

Appendix E: Methodological Details

E.1: Sampling Methodology

Stratified Random Sampling: Across six geopolitical zones of Nigeria, stratified sampling ensured representation from both urban centres (60%) and rural communities (40%).

Sample Size: 1,250 elderly consumers (aged 65+).

Geographic Distribution: Covering all six geopolitical zones of Nigeria, with particular focus on Lagos, Abuja, Enugu, and Kano for in-depth interviews.

E.2: Ethical Considerations

Informed Consent: Written consent obtained before participation.

Confidentiality: Personal data anonymized in reporting.

Institutional Review Board: Approval secured before fieldwork.

Appendix F: Education and Awareness Materials

F.1: Consumer Education Pamphlet (Draft Content)

1. **What is Food Fraud?**

   Explanation and examples.

2. **How to Detect Fraudulent Food Products?**

   Tips for recognizing adulteration and counterfeit packaging.

3. **Reporting Mechanisms**:

   Contacts for NAFDAC and FCCPC complaint desks.

4. **Health Risks of Food Fraud**:

   Common dangers and preventative measures.

LEGAL MEASURES TOWARDS REVERSING NIGERIA'S EPILEPTIC POWER SUPPLY

Fodil Olanrewaju Mohammed-Noah*

Abstract

This study examines efforts deployed by successive governments in Nigeria towards reversing power epilepsy militating against the country's growth and development. These efforts geared towards achieving electricity security (availability, accessibility, affordability and reliability of electricity supply) have been largely ineffective due to continuous disregard of the constitutional provisions governing electricity management and control. Although, previous studies focused on adequacy of investment as panacea to achieving stable supply of electricity, however, the role of law in bringing desired change in the Nigerian Electricity Supply Industry (NESI) has not been adequately investigated. This study appraised how continuous disregard of the Basic Norm (Constitution of the Federal Republic of Nigeria, 1999) is impacting the realisation of electricity security in Nigeria. Hans Kelson's Pure Theory of Law provided framework of this study, while doctrinal method was adopted. Notwithstanding state actors' humongous spending on fixing power epilepsy in NESI, security of electricity supply still eludes Nigerians. Legislation governing reforms in NESI has been ineffective due to a centralised governance structure contrary to the 1999 Constitution (as amended). Certain provisions in the Electricity Act, 2023 conflict with extant provisions of the 1999 Constitution thereby inhibiting the fruit of uninterrupted supply of electricity that Rule of Law has to offer. Stakeholders in the Nigerian Electricity Supply Industry should play by the Basic Norm in order to successfully address the perennial problem of power epilepsy in Nigeria.

Keywords: *Legal Regime, Power Epilepsy, Power Sector Reform, Rule of Law, Stable Electricity.*

1.0 INTRODUCTION

That only few Nigerians are aware of the magnitude of challenges militating against security of electricity supply in the power sector cannot be overemphasised; in the light of this seemingly shocking reality: **only 29% of Nigerians is aware of the state actors' efforts at reforms in the power sector**[1122]. This reality forms part of findings which emanate from a survey conducted by Power Sector Reform Programme (PSRP)

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[1122] PSRP Newsletter, Vol.1, Issue 1 of January, 2018, page 3-the finding was as a result of a survey conducted by PSRP Implementation Committee in the six geo-political zones of the country with cities of Lagos, Port Harcourt, Aba, Abuja, Kano and Bauchi as objects of survey. The survey deployed the use of quantitative and qualitative techniques to collect data from over 1,200 respondents in at least 200 households per city (each city representing the six geo-political zones of Nigeria) and 18 maximum demand consumers.

Implementation Committee in the six geo-political zones of the country with cities of Lagos, Port Harcourt, Aba, Abuja, Kano and Bauchi as objects of survey. The survey used quantitative and qualitative techniques to collect data from over 1,200 respondents in at least 200 households per city and 18 maximum demand (MD) consumers.

Results emanating from the survey provide vital inputs to technical content of the power sector reform programme. Outcomes of the survey are reproduced in Figure 1 thus

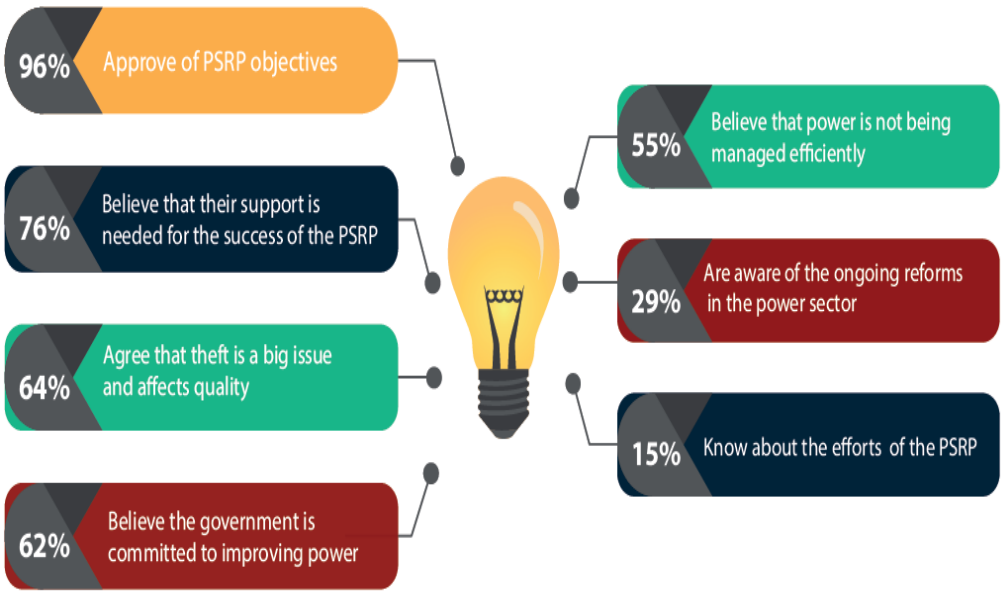

FIGURE 1: 2018 SURVEY OF POWER SECTOR REFORM PROGRAMME (PSRP)

IMPLEMENTATION COMMITTEE

SOURCE: PSRP NEWSLETTER, 2018

No wonder why the NEPA spirit refuses to leave the psyche of average Nigerians. The thunderous sound of **'UP NEPA'** rents the air at the sudden sight of a restored light; even from those whose birth did not witness the existence of NEPA.

Power sector reforms in Nigerian Electricity Supply Industry (NESI) pose a great deal of challenges to virtually all stakeholders in the industry[1]. Modelled after the United States of America, the Nigerian power sector reform options seek to, among other things, unbundle vertically integrated utilities into separate generation, transmission and distribution entities[2], while its national utilities were unpackaged into smaller franchise areas[3]. The call for reforms in NESI was perceived to have stemmed out of inadequate electricity supply, low generation capability, ineffective regulation and high technical losses, out-dated power facilities, inefficient consumption of electricity, inadequate investment capital, amongst others[4]. This perennial epilepsy in the electric power sector has compelled Nigeria to gain the notoriety of an energy deficient nation with the greatest unmet needs, and one with the highest number of untapped resources. The country has taken over as the nation with the highest number of extremely poor people. Before now, India used to hold the position with a population of 1.3 Billion persons in contradistinction to Nigeria's population of a little below 200 Million people[5].

It is therefore posited that the tool most essential to stemming the tide of poverty lies in the abundant level of electric power inputs available to stimulate industrial activities, generate jobs, transportation, commerce, micro enterprises and agricultural outputs. It is of crucial importance to take note that successive governments' efforts at reforming the NESI are geared towards one goal; uninterrupted supply of electricity.

2.0 POWER SECTOR REFORM PROGRAMME

[1] OI Okoro, etal 2007, Power sector Reforms in Nigeria: Opportunities and Challenges, *Journal of Energy in South Africa,Vol. 18, No. 3 Cape Town 52 – 57*,www.researchgate.net/publication/237825169, accessed on 15th September, 2018

[2] All the vertically separated Distribution Companies (DISCOs); Transmission Company of Nigeria, Plc.(TCN); Generation Companies (GENCOs) represent the structural changes that take place in NESI.

[3] All the 11 DISCOs and the 6 GENCOs represent a distinct franchise area.

[4] Ibid at 53

[5] See www.vanguardngr.com assessed on 25/6/2018

Power sector reform in Nigeria has elicited numerous false dawns. The earliest comprehensive reform programme dates back to the seventies when both ECN and NDA merger resulted in the formation of NEPA. Nigerian Government had allowed inefficiency and disregard for Rule of Law define electricity industry in the last 40 years because there was no real challenge to do things differently. After all, the most populous nation was awash with easily realisable petro-dollar[6].

Since the end of 80s, over $2 Billion[7] per annum had been invested in NEPA infrastructure to no avail. Generating capacity had been stagnant, transmission and distribution infrastructure had been deteriorating to a point where actual generating capacity evacuated to the grid hit all-time low of 1,700MW in 1998 despite installed capacity of 6,000MW. In 1998, another round of reform came to the rescue of the power sector. The Federal Government partially deregulated the power sector by allowing a limited number of private participation in electricity generation through Independent Power Producers[8]. As observers would agree with the writer that the problems bedeviling Nigerian Power Sector did not just materialise at the turn of the new Millennium; the situation had been compounded over the last 40 years by the inaction of several state actors who came, who saw, but refused to conquer the raging menace of epileptic supply of electricity.

This sad narrative engendered a socio-economic development constantly entwined in the perennial nightmarish darkness brought on by Nigeria's epileptic power supply. Despite successive governments' rhetoric in changing the status quo and building a strong and virile electric power sector for Nigeria, the realities on ground indicate that the tempo of reforms had been so sluggish and unappealing to investors from the private sector; entrepreneurs who still regard Nigerian electricity industry as a high-risk venture[9]. Although, this problem is also exacerbated by the paucity of scholarly works on the legal framework employed to reform the electric power sector and surmount the challenges relating to regular supply of electricity in NESI, the fundamental problem engendering power epilepsy in Nigeria largely concerned the total disregard for

[6] SA Caulcrick, 2018, *Power in Nigeria: Will there ever be light?* Joe-Tolalu& Associates, Lagos, 9-15
[7] CSL Research 2014, Nigerian Power Sector, CSL Stockbrokers, Lagos, 46-47
[8] Ibid @ 47
[9] Yemi Oke, 2012 Beyond Electric power sector Reforms: The Need for Decentralized Energy Options (DEOPs) for Electricity Governance in Nigeria, *The Nigerian Journal of Contemporary Law*, Vol. 18 (1) 67 - 92

constitutional provisions[10] governing electricity management and control. Hence, the need for this paper becomes more apt.

Given the critical role electricity plays in socio-economic development of any nation and the development of all sectors of its economy, successive governments had resolved to implement far-reaching and structural-changing reforms in the power sector. Such recent reforms date back to April, 2001 when National Electric Power Policy was adopted under the able leadership of Chief Olusegun Obasanjo, GCFR. Through, his Roadmap for Power Sector Reform Policy, Dr. Goodluck Jonathan, GCFR followed suit[11] with the unbundling and subsequent privatisation of electricity generation and distribution companies in 2013; leaving the transmission unit of the value chain unbundled.

Although, the Electric Power Sector Reform (EPSR) Act of 2005[12] and the Roadmap for Power Sector Reforms of 2010 serve to facilitate a competitive, efficient, and private-sector led power sector, the sector still faces infrastructure, liquidity, and governance crises that necessitate specific strategic interventions by reform drivers.

These challenges therefore necessitated another round of reform by the immediate past administration; led by President Muhammadu Buhari. Coming at a time when the power sector was in a state of emergency, Muhammadu Buhari, GCFR initiated some policies, through his Economic Blue Print[13]. One prominent policy document that attempted to address challenges facing the power sector is the May, 2016 Roadmap for Incremental, Stable and Uninterrupted

[10] See Paragraph 13 of Item F, Part II, Second Schedule to the 1999 Constitution (as amended)in the 2023 alterations which stipulates that the Federal Legislature may enact laws for the Federation or any part thereof with respect to: (a) electric power and the establishment of electric power stations; (b) the generation and transmission of electric power in or to any part of the Federation and from one state to another state; (c) the regulation of the right of any person or authority to dam up or otherwise interfere with the flow of water from sources in any part of the Federation; (d) the participation of the Federation in any arrangement with another country for the generation, transmission and distribution of electric power for any area partly within and partly outside the Federation; (e) the promotion and establishment of a national grid system; and (f) the regulation of the right of any person or authority to use, work or operate any plant, apparatus, equipment or work designed for the supply or use of electric power

[11] FRN 2010, *Roadmap for Power Sector Reform (a Customer-Driven Sector-Wide Plan to Achieve Stable Power Supply)* Presidential Task Force on Power, Abuja. A Foreword written by President Goodluck Ebele Jonathan (2009-2015)

[12] By the presidential assent made to Electricity Bill on 8th day of June, 2023, the 2005 Act became obsolete and gave way to a new Electricity Act, 2023

[13] FRN, 2017, Economic Recovery & Growth Plan 2017-2020, Ministry of Budget & National Planning, Abuja, 1-140

power supply. The 2016 Road map dovetails into a comprehensive electricity market intervention by the Buhari regime, with its related milestones; like the sector governance, metering implementation, eligible customers, mini-grid regulation as well as the Fifth Alteration Act (No. 17) of 2023 which altered paragraph 14(b) of Part II, Second Schedule to the 1999 Constitution by deleting after the word 'areas', the words; not covered by a national grid system. This reform initiative is referred to as Power Sector Recovery Programme (PSRP). The PSRP was designed on this basis and aims to reset the NESI, while enhancing the 2016 Roadmap.

It is important to note that efforts made so far by Chief Olusegun Obasanjo, in his attempt to reform the Nigerian Electric Power Sector for purposes of achieving greater efficiency, eradicating poverty, developing the economy and engendering national security; vis-à-vis Chief's penchant for his disregard to Rule of Law shall be the primary focus of this paper. It is also important to note that significant strides (though failed to yield the desired results) were recorded in the power sector during the reign of Presidents Jonathan[14] and Buhari[15] as successive reform drivers. Although, President Bola Ahmed Tinubu assented to the Electricity Bill[16] on the 8th day of June, 2023 to birth the new Electricity Act, 2023, however, the focus of the paper will not be directed at the new Act. This is because its implementation is still at the gestation period.

3.0 OBASANJO'S NEEDS PROGRAMME ON POWER SECTOR REFORM

As the first President who governed Nigeria in three distinct rows[17], Chief Olusegun Obasanjo played a far-reaching role in the restructuring of the power sector. His second bite at the presidential cherry witnessed the country go through a period of social, political, and economic decline. In responding to the developmental challenges, Obasanjo launched a policy[18] document called the National Economic Empowerment and Development Strategy (NEEDS). Replicating

[14] See FRN 2010, *Roadmap for Power Sector Reform (a Customer-Driven Sector-Wide Plan to Achieve Stable Power Supply)* Presidential Task Force on Power, Abuja

[15] See FRN, 2017, Economic Recovery & Growth Plan 2017-2020, Ministry of Budget & National Planning, Abuja

[16] Which repealed the old Electric Power Sector Reform (EPSR) Act, 2005

[17] The first row was between 1976 to 1979; the second row was between 1999 to 2003; while the third row was between 2003 to 2007

[18] IMF 2005, Nigeria: Poverty Reduction Strategy Paper-National Economic Empowerment and Development Strategy, IMF Publication Services, Washington, DC, 1-101

same policy documents, some state governments designed, as necessary complements to NEEDS, their own State Economic Empowerment and Development Strategy (SEEDS).

In achieving its goal of prosperity for all, NEEDS focused on four key strategies, to wit: value re-orientation; poverty reduction; wealth creation; and employment generation. The plan's key strategies are predicated on the idea that achieving the desired goal requires creating an atmosphere conducive to business growth, an atmosphere where people are better equipped to take advantage of the new sources of income that the plan aims to promote, and the government is oriented to providing basic services[19].

Realising that Nigeria's infrastructure fails to meet the needs of the average investor, stifling investment and raising the cost of doing business, the NEEDS document recommends that the government delegate routine business management to the private sector and focus its efforts on providing adequate infrastructure and a business-friendly regulatory framework[20].

The most essential infrastructural necessity for the private sector to progress is electricity. It's also worth noting that the energy supply sector is capital-intensive, world over, and cannot be sufficiently supported by the government on its own. In order to encourage private sector engagement, the industry has to be overhauled.

Before the overhaul was carried out, Nigeria's electricity grid was so inefficient that it stifled economic growth and social development. The electricity grid was so unstable that it could not keep up with the demands that were placed on it. The neglect of the electricity industry underscored the following facts:

a) Between 1990 and 1999, no new power plants were constructed; between 1990 and 1999, no major plant overhauls were performed; in 1999, just 19 of the 79 generating units were operational;
b) In 1999, real daily generation was below 2000MW;
c) Since 1987, there have been no new transmission lines constructed.
d) Between 1980 and 2000, government spending steadily declined.

[19] Ibid @ ix
[20] Ibid @ 58-59

However, with improved funding which took place between 2001 and 2003 the power sector began to see a face lift. Generation rose gradually to about 4,000MW/hour on a daily basis. These improvements occurred largely as a result of President Obasanjo's determination to turn around the power sector fortunes. New funds and capacity were injected into the now defunct NEPA and a set of mandates was outlined towards overhauling the power sector. The Presidential mandates[21] include timely execution of the electricity sector reform package; 10 Gigawatts generation target from existing plants, new host generation, and IPPs with reasonable costs; enhancing transmission and distribution capacity for the increased output; exploring other available fuel-source, such as wind, solar, bio-mass, coal, and hydro; renewing attention to tariff issues; deregulating the electricity industry to engage more private sector.

Above highlighted presidential mandates call for expanded system capacity via generation, transmission, and distribution, as well as liberalisation of the electricity industry in order to encourage involvement of the private sector and simultaneously attracting investment. To the administration of Chief Olusegun Obasanjo, deregulation of the power sector promotes: alternative sources of energy development; usage; and cost reflective tariffs. In order to achieve all these goals, regulatory intervention[22] is required.

The NEEDS document proposes timelines within which the power sector reform can realise its objectives before 2007. These timelines are itemised thus:

I. purposefully increase the power plant's capacity from 4200MW to 10,000MW;
II. increase transmission capacity from 5,838MVA to 9,340MVA;
III. increase distribution capacity from 8,425MVA to 15, 165MVA;
IV. raise collection volume of tariff from 70% to 95%
V. lower the rate of losses in transmission and distribution from 45% to 15%;
VI. ensure at least 30% reduction in controllable expenses
VII. right size to around 15% reduction in employee strength;
VIII. establish 11 semi-autonomous commercial entities;
IX. make the transmission entity a semi-autonomous unit;

[21] Ibid @ 60-62
[22] N El-Rufai 2013, *The Accidental Public Servant*, Safari Books, Lagos, 98

X. Complete the unbundling of generation segment in NESI by 2004 fourth quarter.

Despite President Olusegun Obasanjo's determination to achieve the set targets, power sector reform appears to be yielding unsatisfactory results after 2007 when the President handed over the mantle of leadership to President Umaru Musa Yar' Adua. One may ask: why the problems militating against the power sector defy solutions. President Olusegun Obasanjo was quick to blame the administration of President Umaru Musa Yar' Adua on the apparent failure of the NEEDS strategy when he said:

> *But more importantly, we prepared NEEDS II, which was thoroughly discussed with the incoming administration, but reversed in favour of a half-baked seven-point agenda*[23].

In another breath, President Obasanjo did lament his ordeal and frustration over his sudden realisation of the mess that permeated the whole value chain of the electricity industry which makes it difficult to reform. After his eight-year tenure, Chief Olusegun Obasanjo realised that the plagues of the power sector are: corruption, past neglect and dereliction. He did make a lengthy statement to give a graphic picture of this mess in his book: My Watch-Political and Public Affairs[24].

From President Olusegun Obasanjo's lengthy Treatise, one can decipher the following points:

1) President Olusegun Obasanjo did not know that NEPA was riddled with corruption from top to bottom until when he was briefed few years after he was elected as President of the Federal Republic of Nigeria in 1999;

2) President Olusegun Obasanjo was overwhelmed with the shocking revelations of corruption, fraud and outright stealing in NEPA to the extent that it almost became a nightmare to bring anybody to book or seriously sanction any official;

3) Between the year 1982 and the year 2000, there had been no investment in power generation;

[23] Obasanjo, O. 2014, My Watch-Political and Public Affairs, Volume Two, Kachifo Limited, Lagos, 425
[24] Ibid @ 337-338

4) Even with the availability of all the moneys required to reform the power sector, eight years is not enough to achieve the desired goal;

5) President Olusegun Obasanjo grossly underestimated the extent of decays underlining the power sector and such singular act makes it difficult to find solution.

May be President Olusegun Obasanjo would have solved the myriads of problems facing the power sector if the system allows him to employ the use of Decrees as he did between 1976 and 1979 when his reign lasted as Head of State. Probably, he would have employed the use of Decrees to execute those officials who allegedly engaged in 'shocking corruption'. Little did the President realise that his past actions and inactions as a representative of military institution contributed immensely to the present state of affairs in the polity and the power sector in particular. The President should be reminded that he was once told that the institution in which he represents actually 'slaughtered the sacred cows of the rule of law'[25]. If not for the demise of the rule of law under the military[26], those officials who allegedly engaged in such fantastic corruption and out-right stealing in the defunct NEPA and elsewhere should have been brought to book-without much ado-by the institutions established for that purpose. Of course, President Olusegun Obasanjo demur-very forcefully- to virtually every point of criticism raised by Folarin Shyllon in the book they both co-authored.

4.0 THE RULE OF LAW DEBATE

Whenever the term: rule of law arises as object of public discourse in Nigeria, some questions like: is there law in Nigeria? Is there rule of law in Nigeria? Why are laws not being properly enforced? In order to provide response to these questions, an erudite legal practitioner succinctly argued: ***there is no doubt that there is law in Nigeria but what is lacking is the culture of enforcement***[27]. Nigeria has, in abundance, legislations on every conceivable issue of law but many of these legislations only exist in archives. It is not in contention that both governments and the

[25] Folarin Shyllon, and Olusegun Obasanjo,. 1980, *The Demise of the Rule of Law in Nigeria Under the Military: Two Points of View*, Insttitute of African Studies, University of Ibadan, Ibadan, 3

[26] Folarin Shyllon, and Olusegun Obasanjo, 1980, *The Demise of the Rule of Law in Nigeria Under the Military: Two Points of View*, 1-55 The book was an outcome of a debate on the Rule of Law between Folarin Shyllon and General Olusegun Obasanjo (rtd.) with selected commentaries from other four distinguished scholars of the time.

[27] Folarin Shyllon, and Olusegun Obasanjo, 1980, *The Demise of the Rule of Law in Nigeria Under the Military: Two Points of View*, 1-55

governed habitually break Nigerian laws. Rule of law seldom governs the affairs of men in Nigeria; arbitrary use of power by the privileged in the society does. How did Nigerians arrive at this sorry state of affairs? Who is responsible for this level of indiscipline? Where and when did we get it wrong? Plausible answers to these recurring questions are rooted in history.

It all started like a monologue when Folarin Shyllon presented a paper on ***the Demise of the Rule of Law in Nigeria under the Military*** on the 5th day of December, 1979 until General Olusegun Obasanjo joined the Institute of African Studies; and he was asked if he could comment on the paper presented earlier. His acceptance of that request led to a second discussion on the earlier paper which came up in January, 1980 as ***The Demise of the Rule of Law in Nigeria Under the Military-Another Point of View.*** While the duo of Folarin Shyllon and Olusegun Obasanjo co-authored the book, other selected scholars made some comments to further enrich the discourse. Their views shall be considered in turn.

4.1 FOLARIN SHYLLON

In his point of view on the military's role in the decline and eventual demise of the rule of law in Nigeria, Shyllon opined that the Military did promulgate, on many occasions, Decrees that suspend the provisions of the Constitution of the land. He cited Section 6 of the Constitution (suspension and Modification) Decree of 1966 which also deliberately oust the jurisdiction of the courts to play its traditional role of adjudication and interpretation of the law[28]. This was achieved either by vesting special tribunals with exclusive jurisdiction or by denying a citizen his right to appeal the decisions of the special tribunals. He also cited the Military rejection of the Supreme Court decision *in* ***Lakanmi & another v A.G. (West) & others***[29].and its subsequent promulgation of the Supremacy and Enforcement of Powers Decree No. 28 of 1970 by which the judiciary was subjugated.

In that case, the Appellants were amongst the persons whose assets were investigated by the Tribunal of Inquiry set up by the Western State Government under Edict No.5 of 1967 wherein the Tribunal made an order dated 31st day of August, 1967 under Section 13(1) thereof; prohibiting the Appellants from further dealing with their properties except with the permission of the Military

[28] Ibid @ 4
[29] (1970) 6NSCC, 146 @ 164

Governor, Western State. The order provided that all rents from the properties should be paid into the State's sub-treasury pending the determination of the issues involved in the investigation. The Appellant thereupon applied to the High Court for an order of Certiorari to quash the order on the ground that it contravened SS.22 and 31 of the 1963 Constitution of Federal Republic of Nigeria and that it was also contrary to Public Officers (Investigation of Assets) Decree No.51 of 1966

The High Court dismissed the application on the grounds that Decree No.51 was not in operation in the Western State when Edict No.5 of 1967 was made, and that Section 21 of the Edict had ousted the jurisdiction of the High Court. The Appellants appealed to the Court of Appeal of Western Nigeria. While appeal was pending, the Federal Military Government passed three (3) successive Decrees; which are: No. 37 of 1968; No. 43 of 1968; and No. 45 of 1968, all of which were calculated to validate the order of the Tribunal. The Appellants were expressly named in the Schedule to Decree No.45, which also prevented the courts from inquiring into the validity or otherwise of anything done thereunder, and provided that the provisions of Chapter III of the 1963 Constitution should not apply to any matter arising under the Decree. The Court of Appeal of Western Nigeria consequently held that it had no jurisdiction and dismissed the appeal. On a further appeal to the Supreme Court, it was argued, inter alia, whether the Federal Military Government was a constitutional interim government deriving its powers from the constitution whose decrees therefore could abrogate the provisions of the constitution only to the extent and in so far as the necessity of the situation warranted; or whether it was a revolutionary government deriving its powers from the fact of the revolution. The Supreme Court held, among others, that the invitation by the Council of Ministers, which validly met in January 1966 and which was duly accepted, to form an interim Military Government was unprecedented in history, and it was obvious that the Government thus formed would uphold the constitution and would only suspend certain sections of it as the need arose.

Hence, appeal allowed; order of the Tribunal quashed; Edict No.5 of 1967 and Decree No. 45 of 1968 declared ultra vires, void and of no effect[30]. It must be noted that the above judgment was rendered ineffective by the Constitution (Supremacy of Enforcement of Powers) Decree No.28 of

[30] Folarin Shyllon, and Olusegun Obasanjo, 1980, *The Demise of the Rule of Law in Nigeria Under the Military: Two Points of View,* 1-55

1970. Arbitrariness in the Military, through the exercise of its legislative and executive powers, was no longer really subject to judicial review, and by so doing it continues to indulge in retroactive legislation which nullifies judicial order. An instance of this retroactive legislation is the Counterfeit Currency (Special Provisions) Decree which was promulgated on the 29th day of May, 1974 but was deemed to have come into operation on the 1st day of January, 1973[31].

It was the learned scholar's position that the 1975 sweeping compulsory retirement of public officials which was extended to Judges of Superior Courts was not only a violation of Civil Service rules which created security of tenure but also the rules of natural justice. While he argued that there is no alternative to the rule of law, he concluded by quoting Justice Alagoa's obiter in Amakiri's case thus: *the fruit reaped by respect for the Rule of Law is stability, efficient administration, economic progress and satisfaction amongst the citizens*[32]. Indeed, Military regime possesses none of the benefits that the Rule of Law offers.

4.2 OLUSEGUN OBASANJO

In forceful demur to the position canvassed by Professor Folarin Shyllon on the Demise of Rule of Law under the Military, Chief Olusegun argued that the rule of law principle that states that no one is punished until he commits a specific violation of the law, as determined by the usual legal process before the ordinary courts, is solely applicable in criminal law; that the principle, as practised in Britain exempts as a general rule, restraining order, property compulsorily acquired by the State and executive orders that are directly enforced. He argued further that the legal principle that all persons have equal rights and duties before the law are of doubtful general value and validity, especially when it affects public officials who inevitably had powers conferred on them that an ordinary person does not have[33]. In his defence of the Military suspension and/or modification of the constitution through promulgation of Decrees, he argued that when Military took over the reign of government in Nigeria, there was virtually nothing left of the kernel of the rule of law except arson, murder, robbery and general insecurity of life and property. In absolute terms, there was no law, no order and no security[34]. He argued further that those promulgated

[31] Ibid @ 8
[32] Ibid @ 17
[33] Ibid @ 21
[34] Ibid @ 23

Decrees had only provided the Military with the means by which they could run the affairs of the country in much the same way the constitution provides framework for the operation of civilian administration[35]. To Chief Olusegun Obasanjo, if the existence, security and orderly process of the society are threatened, it is the responsibility of the governing authority to take necessary measures to save the society from self-induced destruction. In his response to the 1975 massive dismissal and compulsory retirement of public officials, Chief Olusegun Obasanjo argued that the situation of the country is one of paralysis which requires shock therapy to bring it to active life again. Rather than accuse the Military of sowing the seed of lawlessness and violating human rights in the polity, it should be commended for introducing the duo of Public Complaint Commission and Legal Aid Scheme; he opined. He further affirmed that the Military arrived at Nigeria's political landscape as a child of necessity and had done more than their civilian predecessors in maintaining stability and sanity, security, law and order and the rule of law. Other selected commentators include the following:

4.3 CHIEF LATEEF ADEGBITE

While he conceded that Military regime is abnormal, Chief Lateef Adegbite contended that the abnormality that comes with the regime must be recognised and concessions made to its measures[36]. As a corrective regime, the Military could not but employ unconventional methods to prosecute its objectives. He however outlined areas where the Military had gone overboard in the discharge of their corrective measures. These include: resort to retroactive legislation; ouster of jurisdiction of the courts; negation of separation of powers; breach of judicial independence; and expropriation of private property[37].

4.4 BAYO ADEKSON

As an expert in civil military relations, Adekanye, fondly called Adekson, situated the Rule of Law debate within the context of his research and teaching interests. The point that Rule of Law is of English derivation and therefore irrelevant to the needs of Nigerians, holds no water. It does not follow that because a concept is of foreign derivative, it is therefore bad and irrelevant[38]. The

[35] Ibid @ 24
[36] Ibid @ 37
[37] Ibid @ 39
[38] Ibid @ 43

debate succeeded in bringing to fore, the familiar relationship of contradictory compatibility between the two concepts of authority and power known to political theory and application of those concepts to the comparative civil-military sphere[39].

4.5 CORNELIUS OYELEKE ADEPEGBA

While the erudite scholar conceded to the validity of the military rulers making laws in order to rule effectively, he considered as undesirable the laws made to be administered retroactively. Also considered undesirable is the manner in which the military acted on certain issues without any regard to law[40]. If the acts of the military are defended on the effectiveness of their results, then no one wishes the country well by endorsing a replica of American Constitution for Nigeria. A constitution based on the way the military had effectively ruled Nigeria for years would have been ideal. Although, the Military came to power as a result of some disturbances in the country, the disintegration out of which it has produced unity was caused by the Military itself; there was no secession or civil war until the military came to power. The general economic advancement made was a coincidence of oil boom, rather than the result of anybody's serious effort. Then the order maintained in the society was achieved partly by force and partly by the constant promise of the Military returning to the barracks.

4.6 PROFESSOR R.G. ARMSTRONG

In his candid opinion, the Professor of Linguistics in the Institute of African Studies stated that on the record, and looking around the world, it has usually taken a civil war or conquest of some kind to establish a state of any importance[41]. Federal Republic of Nigeria was established by British conquest in the 1890's, and its existence was confirmed by a 30-month civil war. Nigeria is now a very important nation for the future of the continent of Africa. It is big enough to have very important economic resources, and it has the largest black population of any state in the world. It has a strategically advantageous location, and it has a serious possibility of escaping-at least somewhat- from the entanglements of neo-colonialism. Any attempt to divide Nigeria now would simply mean colonialism again. It would mean intervention by one or more of the great imperial powers and would weaken Africa when the need is to strengthen it.

[39] Ibid @ 44
[40] Ibid @ 49
[41] Ibid @ 47

In 1966, Nigeria had only one really national institution: the Nigerian Army. In 1970, after the successful conclusion of the civil war, the same situation prevailed; and the Federal Military Government faced the task of building a national economy, a national educational system, a national judiciary and even a national government. No democratically-minded person likes a military government; but sometimes, the alternative is breakdown of all law, whatsoever. Military justice is rough justice. And it is vulnerable to abuses of various kinds. Nigeria is fortunate in that its Army is broadly representative of the population and in that the Army preserved its taste for the rule of law throughout its years of mild-dictatorship. In the end, it reinstated elected, civilian government; and in the period when the country is still convalescing from old wounds and is busy trying new systems, it is well to watch our language while making necessary criticism. Let us not forget the tens of thousands of brave men who gave their lives to preserve the nation that makes possible an open-university debate on the rule of law in its recent past.

Viewed from these highlighted debates, it is no gainsaying the fact that the institution[42] that allegedly 'slaughtered the sacred cows of the rule of law' ended up becoming its own casualty. Like J. P. Clark Bekederemo's prophetic poem, *the Casualties*[43], those who started the fires of under development, poverty, insecurity; and cannot put it out are also the casualties[44].In the immortal words of Professor Armstrong, Nigeria, as at 1966, had only one really national institution: the Nigerian Army. In 1970, after the successful conclusion of the civil war, the same situation prevailed; and the Federal Military Government faced the task of building a national economy, a national educational system, a national judiciary and even a national government[45]. It was this task of nation building that the Nigerian Army failed to accomplish for over thirty (30) years until 1999 when the institution grudgingly turned over the reins of power to a civilian administration.

[42] Folarin Shyllon and Olusegun Obasanjo, 1980, *The Demise of the Rule of Law in Nigeria Under the Military: Two Points of View*, 47

[43] JP Clark-Bekederemo, 1970, *The Casualties: Poems 1966-68*, Longman, London, lines 1-42. Armstrong referred to the Nigerian Army as the only 'really national institution' that survives the Nigerian civil war,

[44] Ibid lines 12-13

[45] Opcit @ 47

5.0 CONCLUSION

The magnitude of Nigerian power epilepsy is quite troubling[46]when the Africa's most populous nation's System Average Interruption Duration Index (SAIDI) and its System Average Interruption Frequency Index (SAIFI) are observed. While the SAIDI figure was not less than 1,000 hours per year (which is approximately 42 days within the entire year cycle), the SAIFI figure was not less than 600 interruptions per year.[47]

That Nigeria does not have security of electricity supply is certainly not just the paucity of fund in its power sector. The amount spent so far can provide the needed stable power if state actors, including President Olusegun Obasanjo, give due regards to Nigerian laws; especially the constitutional provisions governing the management and control of electricity in Nigeria. President Olusegun Obasanjo is just a sign post of how an average Nigerian obeys his municipal laws. Certainly, Nigeria has, in abundance, legislations on every conceivable issue of law; but many of these laws only exist in archives. It is not in contention that both governments and the governed habitually break Nigerian laws.

It is important to note that the worst form of corruption, in Nigeria, is the violation of the Constitution of the Federal Republic of Nigeria, 1999 which gave the federating units the exclusive preserve to manage and control, within its state, the distribution side of the power value chain. It is also important to note that stakeholders' respect for Rule of Law in the power sector can only reap one beautiful fruit: uninterrupted supply of electricity without *UP NEPA*. No amount of task force-other than the force of law- can salvage the power sector from eventual collapse.

Until all stakeholders in the power sector agree to implement the provisions of Item F, Part II, 2nd Schedule to the 1999 Constitution, their strenuous efforts at addressing the problems of power epilepsy will go to naught.

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[46] C Etukudor, *etal*, 2015, 'The Daunting Challenges of the Nigerian Electricity Supply Industry', *Journal of Energy Technologies and Policy,* Vol. 5, No. 9, 2015 www.iiste.org accessed on 15th September, 2018

[47] Nigeria's SAIDI/SAIFI Dichotomy was extremely high and totally unacceptable when respectively compared with internationally acceptable standards of 90–180 minutes duration of one interruption and 1 – 2 frequency of interruptions per year.

LEGAL CONTROL OF WATER RESOURCES IN NIGERIA: POLICY ISSUES AND CHALLENGES

Michael Kehinde Osadare*

Abstract

Water is the only substance found on the earth naturally in three forms solid, liquid and gas. Water is a remarkable substance. Although a simple compound, it shrouds two-thirds of the planet, caps the poles and pervades the air we breathe. It is the genesis of and the continuing source of life. Without water, humankind - indeed all forms of life on earth - would perish. Important though this substance is its preservation has been treated with complacency as well as its availability denied where urgently required. An appreciation of water as key to environmental health and as a commodity that has real value will no doubt enhance a better management and provision of water. This paper considered the historical review of water resources development in Nigeria and adopted doctrinal methodology to undertake the research study, which includes relevant laws, cases, legal literatures, internet materials, etc. This paper found that the availability of the legal measures put in place by the government or regulating authorities in controlling water resources in Nigeria are inadequate leading to several challenges. It concluded that the low service level of water accounts for why water borne diseases are prevalent sometimes to epidemic scale and food shortages. The way forward is proffered through necessary recommendations.

***Ke*ywords: Nigeria, Watercourses, Water Resources, Riparianism and Riparian Rights**

1. INTRODUCTION

Water is originally derived from the precipitation of rain, hail, snow or dew into the surface of the earth. On reaching the surface, part of this precipitation is evaporated, or transpired by plants, to continue the atmospheric cycle and be precipitated again; part percolates into the soil to form underground collections of water at various depths below the surfaces; and part runs over the surface to form streams, rivers, lakes and oceans.[48] Prior to 1960, water resources development was an exclusive preserve of the private individuals and groups.[49] The government's major intervention came during the first National Development plan period (1962 - 1968) through the

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[48] *John Deed & Son LTD v. British Electricity Authority &Croyoon Corporation*(1950) 66 TLR at P.572.

[49] http://ga.water.usgs.gov/edu/wupt.htrrl"IrrigationWaterUse accessed on 28 February 2025.

establishment of the River Niger and Lake Chad Basin Commissions charged with the responsibility of producing hydrological maps of the country's water resources which were used to fashion out a comprehensive development of agriculture, fisheries, animal husbandry and navigation.[50] This was followed in 1973 and 1974 with the establishment of Sokoto-Rima and Chad Basin Authorities and subsequent increase of the number to eleven River Basin Development Authorities in 1976 to cover the whole country.[51] The River Basin Development Authorities were charged with the responsibility of comprehensive water resources development and management in Nigeria for multipurpose uses. In 1984, they were increased to eighteen and re-designated River Basin and Rural Development Authorities.[52] With the change of the Military Administration in 1985, the number was scaled down eleven[53] and retained the name River Basin Development Authority and its function limited to purely water resources development. Regrettably, however, the impacts of the Authorities are still not much felt. In 1962, the Niger Dam Authority was created[54] for hydroelectric power generation at Kanji Federal Inland Waterways Division (of the Federal Ministry of Transport) for data collection and development of the Niger and Benue River Systems for water transportation.

The quest to intervene in water provision was given impetus given drought of the early seventies. This prompted the intervention of the Federal Government to take a number of actions which resulted in the establishment of some federal agencies. These Agencies include the Federal Ministry of Water Resources (1976), National Water Resources Institute (1977) and the River Basin Development Authorities (1976). While the Ministry has the responsibility to formulate policies and give advice, the Institute is charged with the responsibility of manpower training and research while the River Basin Development Authorities are charged with the development of inter-state surface and underground water resources in specified river basin areas and for the supply of water storage schemes to users for a fee. The tempo of water supply was raised in 1980 with the preparation for and campaign in favour of the United Nations' International Drinking

[50] Ibid.
[51] Ibid.
[52] River Basin Development Authority Act No 35 of 1987 now Cap R9 LFN 2004.
[53] The current River Basin Development Authorities are Anambra-lmo, Benin-Owena, Chad Basin, Cross River, Hadejia-Jama'are, Lower Benue, Niger Delta Basin, Niger, Ogun-Osun, Upper Benue and Sokoto-Rima.
[54] https://www.aelex.com accessed on 18 April 2025.

water Supply and Sanitation Decade (1981 -1990). The goal of the program was to provide water for all by the year 1990 but this was not actualized[55].

In 1991, several legislations were enacted to conserve water and control poster discharge of substances into water to enable it useful for consumption[56]. This was followed by the water resources decree 1993[57]which vests in the federal government the right to the use and control of all surface and ground water and all in any water course affecting more than one state, for the purpose of promoting planning, development and use of the country's water resources; coordinating the distribution, use and management of water resources and ensuring the application of appropriate standards for the investigation, use, control, protection, management and administration of water resources. The National water supply and sanitation policy (NWSSP) was introduced in January 2000 and it provides guidelines on urban and rural water supply (UWS), 40% of small towns' water supply (SWS) and 25% of rural water supply (RWS).[58] As with the division of institutional and funding responsibilities under the NWSSP, the institutional and legal framework for water supply reflects the federal-state divide.

On account of the provisions of the Constitution[59] and the water resources Act[60], the Federal Government has the right to the use and control of inter-state water resources. In all other cases, the State Governments are empowered to enact laws for the development and management of intra-state water resources.[61] At the Federal level, the apex institution is the Federal Ministry of Water Resources, which is also responsible for the River Basin Development Authorities (RBDAs) established under the River Basin Development Authority Act.[62]At the State level, it is the norms for State governments to establish statutory corporations known as State Water Authorities with the responsibility same with the federal government. These bodies are usually

[55] https://en.wikipedia.org accessed on 18 April 2025.

[56] National Environment Protection (Effluent Limitation) Regulation 1991, National Environmental Protection Management of Solid and Hazardous Waste Regulation 1991, National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulation 1991. These Regulations are subsidiary legislations of the Federal Environmental Protection Agency Act Cap.F10 LFN 2004.

[57] Now Water Resources Act Cap. W2 LFN 2004

[58] https://washmatters.wateraid.org accessed 18 April 2025.

[59] Constitution of the Federal Republic of Nigeria, 1999 as amended, item 64, part 1 of the second schedule.

[60] No 101 of 1993

[61]There are 36 states in the Federation and the Federal Capital Territory.

[62] Cap. R9 LFN 2004.

placed under the supervision of a line Ministry.[63] In a few cases, some local governments have established departments for water and sanitation involved in Rural Water Supply activities.[64] Otherwise, it is fair to state that excluding inter-state water resources and specified river basin areas, the State Water Authorities have general responsibility for water supply development and management within the territories of their respective states.[65]

The problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency to urbanization. So, it is essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as source of drinking water as well as for supporting fish life and for use in irrigation. Pollution of rivers and streams also causes increasing damages to the country's economy. Therefore, this research seeks to examine legal issues in the control of water resources and address relevant government policies *vis-à-vis* the challenges for the prevention and control of water resources by the relevant concerned agencies and regulators and where there are pitfalls, to provide solutions to fill the inadequacies..

2. CONCEPTUAL CLARIFICATIONS

The following relevant terms are discussed to fully grasp and appreciate the content of this paper, which are:

i. Watercourses: Water is a finite resources and a basic necessity for all life on earth.[66] Water is used for domestic consumption, irrigation, family; resources for industry and a major source of renewable energy in the form of hydropower. Apart from human use, water is also needed to

[63] The emergence of dedicated State Ministries of Water Resources mirrors the experience at the federal level.

[64] There are 774 Local Governments in the Federation.lt is further noted that the local government area councils usually appoint supervisory councilors in respect of water supply and services. Nevertheless, most RWS schemes in Nigeria are invariably fallen into various states of disrepair and disuse mainly on account of the lack of adequate maintenance.

[65] RG Templeton, *Freshwater Fishers Management* (Fishing Newsbooks, 1984) pp:1-2; RS Fort and JD Brayshaw, *Fisheries Management* (Faber and Faber Ltd., 1961) p.11; DH Mills, *An Introduction to Freshwater Ecology* (Oliver and Boyd, 1972) p.1

[66] National Environmental (Wetland, Rivers and Lakeshores) Regulation, 2009, pp.4-5

sustain the natural ecosystems found in wetlands, rivers, and the coastal waters into which they flow. Water plays a significant role in the continuity of land due to its unique qualities.[67]

A watercourse envisages a relatively permanent course for moving water with reasonably determined boundaries, though not necessarily a permanent flow of water.[68] Thus, the element of a permanent course was found to be lacking where an artificial marsh of a temporary character, which was only present during the times when it was required by mine owners, was found not to be a water course.[69] Similarly, surface water which was intermittently present over an undefined area, without a definite or regular course was held not to constitute a watercourse,[70] and natural source flows of underground water from chalk which at times of flood flowed over the surface land, have been held not to constitute water courses.[71] Likewise it has been found that water which percolates through marshy ground did not constitute a stream.[72]Another defining feature of a stream or water course is the existence of a flow of moving water. Hence, this feature will be lacking where water is stationary, as was held in a case concerning abstraction of water from a canal where no flow of water existed.[73]Although not within the definition of watercourse, however, it has been suggested that if the waters of a Stillwater, lake or pond are polluted the owner will have the same remedies as those that are available to a riparian owner of a stream or water course.[74]

ii. Water Resources: Water resources are natural resources of water that are potentially useful for humans, for example as a source of drinking water supply or irrigation water. This includes surface water and groundwater.[75]

iii. Riparianism and Riparian Rights: Riparianism is a doctrine of ancient origin[76] which defines water rights in terms of use of water in association with ownership of land that borders a water source. The common law doctrine of riparian rights state that the owner of land adjoining

[67] PN Narayanan, Environmental Pollution: Principles, Analysis and control (CBS Publishers & Distributors PVT. Ltd., 2011) p.2.
[68] W Howarth and D MC Gillivray, *Water Pollution And Water Quality Law* (Shaw&Sons, 2001) p.3.
[69] *Arkwrigut v Gell* (1839)5 M&W 203.
[70]*Rawstron v Taylor* (1855) 156 ER 873.
[71]*Pearce v Croyoon Rural District Council* (1910) 74 JP 429.
[72]*M' Nab v Robertson* (1897) AC 129 HL
[73]*Staffordshire Canal Co v Birmingham Canal Co* (1866) LR 1HL 254
[74]AS Wisdom, *The Law of Rivers and Watercourse* (4thed, Shaw & Sons, 1979) p.124.
[75] http://ga.water.usgs.gov/edu/wupt.htrrl"IrrigationWaterUse accessed on 18 April 2025.
[76] http://en.wipidepia.org accessed on 18 April 2025.

water laying in a lake or pond or water flowing in a river, stream, or other water course has certain rights respecting the water. The rights arise by virtue of the ownership of the bank of that water course. One of the major fundamental riparian rights is the right of access to the water itself. However, this right is subject to the lawful and reasonable use of water by other riparian owners upstream.[77] The two major undertakings of riparian doctrine are the definition of a user class and articulation of the corrective rights of its several members. Riparian user class highlights the important of defining what land is riparian and what land is not. The simplest definition deems riparian those tracts of land that are contiguous with the water is edge as well as those that include both upland and beds below watercourse.[78]

3. Sources and Uses of Water

There are several sources of water. We can get water from surface water, ground water or rainfall. Surface water refers to the water that exists in rivers, lakes or streams. Groundwater exists almost everywhere underground. It is found underground in the spaces between particles and rock and soil or in crevices and cracks in rock. Rainfall is the amount of water that falls in a location over a period of time. Although science has proved that man can survive for at most three days without water[79], there are other personal, economic or industrial needs of man and the society which water must meet daily. The main uses of water include commercial water use, domestic water use, hydroelectric power water use, industrial water use, livestock water use, mining water use, etc.

4. LEGAL FRAMEWORK OF WATER RESOURCES IN NIGERIA

1. The 1999 Constitution

The Constitution of the Federal Republic of Nigeria[80] provides for environmental objective contained in section 20 and principle 2 of the Declaration of the United Nations Conference on the Human Environment. Inherent in section 20 of the constitution is the need to protect and safeguard Nigeria's environment from pollution activities. Though the provision of section 20 efface appears non-justifiable in the courts[81], it highlights the continuing importance of imposing upon the state a solemn obligation to preserve the environment, otherwise "the day would not be

[77] Ibid.
[78] Narayanan, opcit.
[79] http://infinitylearn.com accessed on 18 April 2025.
[80] CFRN, 1999 as amended.
[81] *AG Lagos State v A.G Federation* (2003) 35, 1-6. See also J Crawford, 'The Constitution and the Environment' (1991) 13 *Syd, L.R.* p. 11.

too far when all else would be lost not only for the present generation, but also for those to come generations which stand to inherit nothing but parched earth incapable of sustaining life.[82] The constitutional powers over the environment, which principally includes water, subject matter of this research work, are now shared between the Federal Government and the State government.[83]Nigeria is constitutionally a Federation of three district tiers of government[84]. Major Federal and state actions significantly affect the quality of the human environment, within the meaning of National Environmental Standards and Regulations Enforcement Agency (Establishment) Act[85].

One of the basic principles of the 1999 Constitution of the Federal Republic of Nigeria, is that the functions and specific powers should be divided between the Federal and state Governments as to vest certain specified powers exclusively[86] in the Federal Concurrently[87] in the Federal and state Government; and residence power[88]. The present decade can apathy be described as at age of environment.[89] In Nigeria, as in most other countries of the world, environment is the problem of the moment[90]. Protecting, controlling and regulating water is important for the health and welfare of the human race and for the survival of plants and animals.[91]Writing on the environmental situation in developing nations of the world, authors have said: Developing does not subsist upon a deteriorating environment. Sustainable development recognizes balancing the values of both development and environment.[92] The overcrowding in our towns and the paucity of health facilities aggravate the slum problems and cause serious harm to the health of the people. Planning Authorities hardly have at the back of their minds the existence of Environmental Law.[93]

[82] T Okonkwo, *The Law of Environmental Liability* (2nd ed., Afique Publishers, 2010) p. 360.
[83] CFRN,*opcit*, s.20.
[84]AA Utuama, 'Waste Management in Lagos Metropolis: Constitutional Conflicts and Resolutions' (1992 /93) *Nigerian Current Law Review*, p. 81.
[85] NESREA Act, 2007.
[86] CFRN, 2nd Sch, Legislative powers, pt 1, Exclusive Legislative List.
[87] Ibid, pt 1 concurrency Legislative List
[88]*AG Lagos state v AG Federation &Ors*(2003) vol.35 WRN 1-226.
[89] CO Chester and W Rowley, 'Environmental Committees and Corporate Governance' (1992) 20 *Int'l Bus Law* 7, p.342
[90] G Ray and D Siberson, 'Green Economic: National Institute Economic Review' (1991) no. 135, p.50.
[91] DK Mintzer, 'A Warming World: Challenges for Privacy Analysis; Economic Impact' (1988) vol. 4, no.5, p.6
[92] EC Leelakrisnan, 'Law and sustainable Development in India', *Journal of Energy and Natural Resources Law* (1991), vol. 3 No.3, p.193.
[93] CS Ola, 'Confusion Arising between Planning Law and Environmental Law' (1990) vol.3 no.14, *The Gravitas Review of Business and Property law*, p.76.

The above writing depicts the situation in Nigeria, where rapid industrialization, increasing population, and rapid urbanization has contributed to the overall environmental degradation. The importation of obsolete technology into the country with its attendant side effects on the environment has made the government realize the need for environment control legislations to protect our environment from undesirable pollution through different sources, including importation of harmful radio-active goods and services. All these raise the issue about the adequacy of the constitutional provisions over the environment.

The constitutional arrangement in Nigeria has led to a lot of friction between the Federal, State and Local Governments,[94]and there is a clear tendency that the Federal Government is wining and waxing stronger at the expense of the State and Local Governments. These Conflicts on constitutional and jurisdictional issues between the tiers of government are due to several factors. First, certain specified powers are concurrently vested in the Federal and State Governments. There are 12 main items on the concurrency list, subdivided into 30 subsidiaries and 65 numbered items and two items of matters incidental and supplementary to those mentioned on the Exclusive list. In addition to this, it can also legislate for the Federal Capital Territory on any matter whether or not it is intended in the legislative lists. In respect of matters on the Exclusive Legislature list, only the relational assembly may legislate. A state legislature may legislate on any matter not on Exclusive list. This means that the state can legislate on matters within the concurrent legislature list as well as on all matters which are not either of those two lists except where the matters are incidental or supplementary to matters on the Exclusive Legislature List.

Since there is no specific reference in the Constitution vesting the power on the Federal Government to exclusively make law with respect to environmental matters, the state governments possess primary constitutional powers in this area,[95]provided it legislates within its competency. So far as natural resources in Nigeria is concerned, the constitution contains formidable list of Federal powers, a list which generally confers superior legislative authority with respect to water resources regulation and management. All the significant environmental laws in our state books are Federal Laws and Regulations and thus pointing to the facts that the

[94] O Awolowo, *Thoughts on Nigeria Constitution* (Oxford University Press, 1966) p. 122.
[95]Crawford, *opcit*, p.14; *AG Lagos v AG Federation* (2004) 45 WRN 1-226.

constitution creates exclusive powers for the Federal Government in certain specific areas within the Exclusive Legislative list. The Federal Government has the exclusive powers to water resources and can, therefore, validly legislate on matters of environment including water, within 68 granted heads of power in the exclusive legislative list and the 30 items in the concurrent legislative list.

2. The Water Resources Act

The water Resources Act[96], among other provisions, vests the right and control of water in the Federal Government. The Act is designed to promote the optimum planning, Development and use of the Nigeria water resources and other matters connected therewith. The right to the use and control of all surface and groundwater and of any watercourse affecting more than one state together with the bed and banks are by virtue of this Act and without further assurance vested in the Government of the Federation. The Legislative power for this Act is derived from the second schedule, part 1 of the Exclusive Legislative List, paragraph 64 of the Constitution of the Federal Republic of Nigeria, 1999 as amended. The Act[97]provides for rights to access, take and use water by any person for domestic purposes including rearing livestock and personal irrigation schemes. The Act[98] further provides that any person or any public authority may acquire a right to use or take water from any watercourse or any groundwater for any purpose in accordance with the provisions of the Act and any regulations made pursuant thereto. Finally, the Act[99] empowers the Minister who has the responsibility for Water Resources to control groundwater and ensure the effective Administration of the provisions of the Act.

3. River Basins Development Authorities Act[100]

In 1976, the Federal Government established ten (10) 10 statutory corporations known as River Basins Development Authorities. Each authority is vested with powers to develop and manage within its area the projects specified in section 2 of the River Basins Development Authorities Act 1976 as amended, which amongst its functions include the control of pollution in rivers and lakes

[96]Cap W2, Laws of the Federation of Nigeria, 2004.
[97] Ibid,s. 2.
[98] Ibid, s. 3.
[99] Ibid,ss. 4&5.
[100] Now River Basins Development Authorities Act, Cap. R9, LFN 2004 which has thirteen (13) sections. There are now eighteen (18) River Basins Development Authorities.

in the authority's area in accordance with the laid down standards[101]. The function of each Authority is contained in section 2(1) of the Act[102] amongst others is to undertake comprehensive development of both surface and underground water resources for multipurpose use.

4. National Water Resources Institute Act

The Act[103]contains sixteen (16) sections, which establishes the retrial water resources institute for the promotion and development of training programmes and courses in water resources and to advise the Government on water resources training needs and priorities and other matters ancillary thereto.

5. National Inland Water Ways Authority Act

This Act[104] establishes the National Inland Waterways Authority with responsibility, among other things, to improve and develop inland waterways for navigation. The objectives of the Authority and its general functions and powers as contained in sections 2, 8 and 9 of the Act, which evince intention to safeguard the nation's inland waterways from pollution.[105]

6. Harmful Waste (Special Criminal Provision, Etc.) Act

The Act[106] contains all activities relating to harmful waste, the purchase, sale, importation, transit, transportation, deposit, storage of harmful wastes are prohibited under this Act.[107] The Act[108] creates criminal liability in respect of offences under the Act, while also imposes civil liability upon offenders who run afoul of the provisions of the Act[109]. The Act, in effect prohibits the carrying, depositing and dumping of harmful waste on any land, territorial waters and matters relating thereto.

[101] Ibid, s. 2 (1)(f).
[102] Now section 4 of Cap N47 LFN 2004. This new Act CapR9 contains no equivalent provision akin to section 2 (1) (f) of the 1976 Act.
[103] Cap. N47, LFN 2004
[104] Cap. N83, LFN 2004.
[105]The Act, in section 29, defines 'inland waterways' to include all waterways, river, creeks, lakes, tidelands, lagoons below the low water baseline. Also, defined to mean 'the low water along the coast of Nigeria.
[106] Cap. H1, LFN 2004.
[107] Ibid, s. 1.
[108] Ibid, ss. 2 to 11 and 14
[109] Ibid,s. 2

7. National Environmental Standards and Regulation Emergency Agency (Establishment) Act[110]

The promulgation of the repealed Federal Environmental Protection Agency Act[111] (FEPA) brought with it the institutionalization of holistic approach to environmental regulation in Nigeria.[112] The FEPA was later scrapped in 1999 and replaced by another agency in 2006 known as NESREA clothed with similar environmental regulation and enforcement powers and functions established by NESREA Act which provides for protection and installation of anti-pollution equipment in industries and restriction on the release of toxic substances. The Act creates certain criminal offences as well as civil liability. It prohibits discharge of hazardous substances and provides for offences.[113] Other offence sections are on powers to inspect; power to search, seize and arrest; and obstruction of authorized officers, provision for procedure in respect of suits against the Agency[114] and liability of companies and firms.[115]The Act also prohibits harm being done to the air, land and waters in Nigeria.[116]

Considering the availability of the legal and policy measures put in place by the government in controlling water resources in Nigeria, there are obvious challenges that have impeded effective control of water resources, which render these legislations and government policies ineffective. Therefore, there is need for adoption of new policies and management of water resources which requires a fundamental change in attitude towards the value and importance of water and related resources to society, the economy and the environment. Concerted efforts should be undertaken to make Nigerians fully aware of the pressures of their water resources. A well informed public and clearly detained channels for public participation provide the best assurances that water management decisions will take into account the full spectrum of public values.

5. Institutional Framework of Water Resources in Nigeria

i. River Basin and Rural Development Authorities

[110] NESREA Act, 2007
[111] FEPA, Cap. F10 LFN, 2004
[112] OG Amokaye, *Environmental Law and Practice in Nigeria* (2nd edn, MIJ Professional Publishers Ltd, 2014) p. 684.
[113] NESREA Act, s. 27.
[114] Ibid, s.30. *AG Lagos State v AG Federation* (2003) WRN 1 – 266.
[115] Ibid, s. 37.
[116] Ibid, s. 21.

Prior to 1960, water resources development was an exclusive preserve of the private individuals and groups.[117] The government's major intervention came during the first National Development plan period (1962 - 1968) through the establishment of the River Niger and Lake Chad Basin Commissions charged with the responsibility of producing hydrological maps of the country's water resources which were used to fashion out a comprehensive development of agriculture, fisheries, animal husbandry and navigation.[118] This was followed in 1973 and 1974 with the establishment of Sokoto-Rima and Chad Basin Authorities and subsequent increase of the number to eleven River Basin Development Authorities in 1976 to cover the whole country.[119] The River Basin Development Authorities were charged with the responsibility of comprehensive water resources 'surface and ground water) development of Nigeria for multipurpose uses.

In 1984, they were increased to eighteen and re-designated River Basin and Rural Development Authorities.[120] With the change of the Military Administration in 1985, the number was scaled down eleven[121] and retained the name River Basin Development Authority and its function limited to purely water resources development. Regrettably, however, the impacts of the Authorities are still not much felt. In 1962 the Nigeria Dam Authority was created for hydroelectric power generation at Kainji Federal Inland Waterways Division (of the Federal Ministry of Transport) for data collection and development of the Niger and Benue River Systems for water transportation. On account of the provisions of the 1999 constitution[122] and the water resources Act[123], the Federal Government has the right to the use and control of inter-state water resources. In all other cases, the State Governments are empowered to enact laws for the development and management of intra-state water resources.[124] At the Federal level, the apex institution is the Federal Ministry of Water Resources, [125] which is also responsible for the River Basin Development Authorities

[117] http://ga.water.usgs.gov/edu/wupt.htrrl"IrrigationWaterUse"last accessed on 29 February 2025.
[118] Ibid.
[119] Ibid.
[120] River Basin Development Authority Act No 35 of 1987 now Cap R9 LFN 2004.
[121] The current River Basin Development Authorities are Anambra-lmo, Benin-Owena, Chad Basin, Cross River, Hadejia-Jama'are, Lower Benue, Niger Delta Basin, Niger, Ogun-Osun, Upper Benue and Sokoto-Rima.
[122] Item 64, pt 1 of the 2nd Sch.
[123] No 101 of 1993
[124] There are 36states in the Federation and the Federal Capital Territory.
[125] Basically, institutional frameworks in the water sector have been transformed within the last two decades in order to emphasize the importance of water supply and services. At the federal level, there has been the emergence of a Ministry for the management of water resources. This is distinct from the previous situation when management of

(RBDAs) established under the River Basin Development Authority Act.[126]At the State level, it is the norms for State governments to establish statutory corporations known as State Water Authorities with the responsibility same with the federal government. These bodies are usually placed under the supervision of a line Ministry.[127] In a few cases, some local governments have established departments for water and sanitation involved in Rural Water Supply activities.[128] Otherwise, it is fair to state that excluding inter-state water resources and specified river basin areas, the State Water Authorities have general responsibility for water supply development and management within the territories of their respective states.

ii. National Environmental Standards and Regulation Enforcement Agency

The NESREA was established with the preconceived objectives of protection of the nation's environment, conservation of the nation's biodiversity and sustainable development of Nigeria's natural resources and environmental technology.[129]Its primary responsibility is the enforcement ofcompliar.ee with national and international environmental laws, guidelines, policies and standards in other sectors other than oil and gas sector on matters touching on water quality, environmental health, sanitation and pollution abatement, sound chemical management, safe use of pesticides and disposal of spent packages: importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste; noise, air, land, seas, oceans and other water bodies; climate change, desertification, forestry, hazardous wastes, ozone depletion, marine and wildlife pollution, sanitation and other environmental agreements as may from time to time come into force.[130]The Agency may promote co-operation in environmental science and technology with similar bodies in other countries and with international bodies connected with the protection of the environment; it co-operates with Federal and State Ministries, Local Government Councils, statutory bodies, stakeholders and research agencies on matters and

water resources was the responsibility of a department within the Federal Ministry of Agriculture, Water Resources and Rural Development.

[126] Cap. R9 LFN 2004.

[127] The emergence of dedicated State Ministries of Water Resources mirrors the experience at the Federal level.

[128]There are 774 Local Governments in the Federation. The Local Government Area Councils usually appoint supervisory councilors in respect of water supply and services. Nevertheless, most RWS schemes in Nigeria are invariably fallen into various states of disrepair and disuse mainly on account of the lack of adequate maintenance.

[129] NESREA Act, s. 2.

[130] Ibid, p.7.

facilities relating to environmental protection; and carries out such other activities as are necessary or expedient for the full discharge of the functions of the Agency under the Act.[131] It also has wide powers[132] to make grants to suitable authorities and bodies with similar functions for demonstration and for such other purposes as may be determined appropriate to further the purposes and provisions of the Act; to collect and make available, through publications and other appropriate means and in cooperation with public or private organizations, basic scientific data and other information pertaining to pollution and environmental protection matters; to enter into contract with public or private organizations and individuals for the purpose of executing and fulfilling its functions and responsibilities pursuant to the Act; to establish, encourage and promote training programmes for its staff and other appropriate individuals from public or private organizations; and to enter into agreements with public or private organizations and individuals to develop, utilize, co-ordinate and share environmental monitoring programmes, research effects, basic data on chemical, physical and biological effects of various activities on the environment and other environmentally related activities as appropriate. The Agency may establish such environmental criteria, guidelines, specifications or standards for the protection of the nation's air and inter-State waters as may be necessary to protect the health and welfare of the population from environmental degradation; establish such procedures for industrial or agricultural activities in order to minimize damage to the environment from such activities; maintain a programme of technical assistance to bodies (public or private) concerning implementation of environmental criteria, guidelines, regulations and standards and monitoring enforcement of the regulations and standards thereof; and develop and promote such processes, methods, devices and materials as may be useful or incidental in carrying out the purposes and provisions of the Act.[133]

Prior to the establishment of the defunct Federal Environmental Protection Agency (FEPA), there had been conscious Federal Government efforts to tackle environmental problems even though on minimal level. The groundwork for a Federal Government institution, which would deal with environmental protection, was laid in 1975 when a Division of Urban Development and Environment was created as part of the defunct Federal Ministry of Economic Development. The

[131] Ibid.
[132] Ibid, *ss.* 5, 10, 13, 25, 26 and 37.
[133] Ibid, ss. 7(k) & 8.

function stipulated for the Division was the handling of pollution and related environmental matters. Later the same year, the Division was transferred to the former Federal Ministry of Housing, Urban Development and Environment. The Division under the new Ministry was later found to be ineffective, partly because of lack of personnel, but mainly because it was then managed as a component of the Administrative Division of the Ministry.

The promulgation of the repealed Federal Environmental Protection Agency Act[134] brought with it the institutionalization of holistic approach to environmental regulation in Nigeria. The Federal Environmental Protection Agency was later scrapped in 1999 and replaced by another agency in 2006 known as the National Environmental Standards and Regulations Enforcement Agency (NESREA) clothed with similar environmental regulation and enforcement powers and functions. The Agency has wide powers and extensive functions to regulate the environment and also to make regulations for the purposes of carrying out or giving full effects to the functions of the Agency. Also in 1999, the Federal Government created a separate Federal Ministry of Environment and by a Presidential Directive,[135] relevant ministries, departments and units of the Federal Ministries[136] were drafted into the Ministry. Its primary mandate is to achieve the environmental objectives of the State as set out in Section 20 of the 1999 Constitution, which is 'to protect and improve water, air and land, forest and wildlife of Nigeria'. The Ministry is also empowered to co-ordinate the activities of the three tiers of government - Federal, State and Local Governments in respect of environmental protection activities.

iii. National Council on Environment

The National Council on Environment consists of the Minister of Environment, Minister of State for Environment, Commissioners of Environment and the Chief Executive of the States' Environmental Protections Agencies in case of States without a Ministry of Environment. The Council functions as a consultative and advisory body on national environmental matters. In

[134] Cap. F10, Laws of the Federation of Nigeria, 2004 (now repealed).
[135] Ref. No. SGF.6/S.221 of October 12, 1999.
[136] Such departments and units include Forestry Department (including wildlife, forestry monitoring, evaluation and coordinating unit - FORMECU of the Ministry of Agriculture; Environmental Health and Sanitation Unit of the Federal Ministry of Health; Oil and Gas Pollution Control Unit of the Department of Petroleum Resources of the Ministry of Petroleum Resources; Coastal Erosion Unit, Environmental Assessment Division, Sanitation Unit of the Ministry of Works and Housing; and Soil Erosion and Flood Control Department of the Ministry of Water Resources.

essence, the Council participates in the formulation, coordination, harmonization and implementation of national sustainable development policies and measures for broad national development.[137]

iv. State Environmental Protection Agencies

The application of any strategy for protecting the environment and conserving natural resources calls for clear definitions of the roles and responsibilities of all concerned especially the Federal, State and Local Governments. Toward this end, State Environmental Protection Agencies and in some States, Ministry of Environment was established. With the 'floor standard 'set by the NESREA in Environmental Guidelines and Standard, each State was encouraged to adopt NESREA standards as the minimum standards without necessarily restricting them from imposing higher standards. In this direction, many State Governments have introduced environmental laws to complement the Federal standard.[138]

v. National Policy on Environment and National Agenda

The National Policy on Environment and National Agenda was formulated in 1989 after an extensive local and international consultation, with the overall aim of achieving sustainable development for the country. It also sets in motion strategies of implementation of the policy by formulating environmental guidelines, standards and regulations for industrial pollution, effluent limitation and solid wastes management.[139] The agenda seeks to integrate in a holistic manner environmental policy into development planning at all levels of government and the private sector; intensify the transition lo sustainable development; address sectorial priorities plans, policies and strategies for the major sectors of the economy and simultaneously foster regional and global partnerships. The implementation of the Agenda is left in the hands of various

[137] http://environment.gov.ng. Accessed on 18 April 2025.

[138] See the various Environmental Sanitation Laws of each state of the federation, for example, Environmental Sanitation Law, 2000 of Lagos state, Environmental Sanitation Law, 1985 of Kaduna State.

[139] The United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil on June 3 - 14, 1992 produced a blue print of action by governments from then into the 21st century and beyond. This blue print is known as Agenda 21 and participating countries were required to fashion out a local version of the document to suit their respective peculiar situations and environmental conditions. This Conference was the largest global gathering on environmental matters. It pulled together over 178 Heads of Government from various countries all over the world.

governmental ministries and departments with the Federal Ministry of Environment as the coordinating Ministry.

6. WATER POLICY ISSUES IN NIGERIA

The National Water Policy in Nigeria is the development of the water resources potentials of the country in order to ensure the availability, equitable distribution and conservation of water for domestic and industrial uses, food production, navigation, hydropower, recreation activities etc. Mabogunje[140]has stated that part of the crisis in the development of water resources in Nigeria is due to differences of opinion with regard to the objectives of economic development in developing countries. According to him, there are two schools of thought. One school of thought sees the objective of economic development as that of increasing over a period of time the real income of a country. This appears to have been the overriding policy of the colonial government in developing Nigeria's water resources at least up to the early fifties when self government was granted to the then regional governments in the west, east and north. The second school of thought sees the objective of economic development as the improvement in the standard of living of the people through an increase in their per capita income over a period of time. It is believed by the proponents of this view that the provision of such amenities as good roads, pipe-borne water and electricity should be extended to areas where the immediate effects are likely to be no more than that of improving the quality of life of people.

Policy decisions in Nigeria as regards provision of pipe-borne water supplies have tended to veer between these two views of development planning up to the time the Army took over in 1966. The present regime seems to be guided in its water resources development policy by the belief that water should be a welfare necessity but the trend is gradually moving towards seeing water as a commodity.[141] However, the development of Nigeria's water resources is still uncoordinated.

7. CHALLENGES FACING LEGAL CONTROL OF WATER RESOURCES IN NIGERIA

The remote causes or impediments and challenges affecting effectiveness of the legal measures put in place to control of water resources, which include:

[140]AL Mabogunje, 'Water Resources and Economic Development inEcology and Economic Development in Africa' (DW Brockensha ed) (California: University of California Press, 1965), in Ayoade loc. Cit. at 589.

[141] http://washmatters.wateraid.org accessed on 18 April 2025.

i. Weak Institutional Framework: These institutions include River Basin Development Authorities, National Environmental Standards and Regulation Enforcement Agency, National Council on Environment, State Environmental Protection Agencies and National Policy on Environment and National Agenda. These institutions were conceived as vehicles for attaining an effective control of water resources development. The statutes establishing these institutions spell out diverse functions and objectives for these authorities from which it may be inferred that their existence nationwide propels their acceptance as an appropriate unit for water management. These institutions are ideally public administrative bodies endowed with civil personality and their objectives are to promote and regulate water resource for public interest. The present organization of these institutions need to be revisited with the aim of restructuring them and re-ordering priorities. A new approach to their orientation and mandate will require statutory and institutional changes.

ii. Lack of Basic Planning Data: This has led to failure of many projects because of the unreliable and inadequate data on which analysis planning and management are based. Flow pattern in space and time in rivers have largely been neglected. Nigeria experiences persistent drought flood and erosion without any long-term solution.

iii. **Flood and Erosion:** The event of flood has particularly been devastating in the coastal areas of the country. This has sometimes led to severe erosion and consequent loss of agricultural soils and lands and damage to engineering structures including those for water resources.[142] Under this circumstance, a lot of sediment is transported which culminates in a situation of clogging up of reservoirs, river channels, etc. and reduces their potential for water storage.

iv. **Manpower shortage:** Proper planning, implementation and control of water resources depend principally on the availability of competent personnel. It is common knowledge that in Nigeria, there has been a marked shortage of manpower in water resources particularly at professional and sub professional levels. The paucity of trained personnel in the middle technical and management levels has been limiting the scale of success of various developments. There is therefore need to step up manpower training.

[142] http://floodlist.com accessed on 18 April 2025.

v. Fund Shortages and Generations: This has always posed a major problem to water resources development globally. Most of the developments in these sectors are government financed. The dividing of resources at the government disposal has also adversely affected successive allocations of money to water resources projects.[143] Most projects therefore remain uncompleted and those whose systems have broken down are financially stunted and cannot be easily rehabilitated all over the country. Those projects that are completed that could have been yielding on lot of revenue could not do so because the beneficiaries enjoy a lot of subsidies. The charges are below the operation and maintenance costs. Revenues which would have accrued to the agencies or institutions concerned and re-invested in other projects are lost. Compiled with this, is the inefficient manner in the billing and revenue collection system of the concerned agencies considerable amount of revenue is cost in the process.

8. CONCLUSION AND RECOMMENDATIONS

This work reveals that a lot has been done to address the challenge of water shortage, management, access, pollution and protection in Nigeria. In view of these challenges and to have effectively controlled water resources vide statutes, this paper recommends the following:

i. There is need for adoption of new policies and management of water resources which requires a fundamental change in attitude towards the value and importance of water and related resources to society, the economy and the environment. .

ii. Policies and legal reforms that will bring about formation of an independent regulatory and monitoring body for the water sector should be put in place and be monitored to prevent being captured for political patronage purposes.

iii. Relevant bodies must manage water resources in an orderly manner so as to prevent waste and ensure that the environment is protected.

iv. For best practices in groundwater management, this research recommends dividing the regions of each state or nation into different basins depending on water yield as a basis for legal licensing of water permits. This because, in some jurisdictions, waters are over appropriated/exploited, unmindful of estimate of availability of water in the area.

[143] Ibid.

PERCEPTIONS OF JUSTICE BY VICTIMS OF SEXUAL VIOLENCE IN NIGERIA

Glory Boniface Udonnah*

Abstract

The experience of being sexually violated is traumatic enough, but for many victims, approaching the criminal justice system in pursuit of justice for the violation of their right to dignity becomes a second trauma. While legal and institutional frameworks exist to punish offenders and provide protection for the victims, the realities of accessing justice with ease remain deeply flawed. The perception of justice by victims is not only shaped by outcomes but starts from their initial contact with the police, who are the gatekeepers of the criminal justice system. Furthermore, how societies respond to their disclosure is also essential. Understanding this perception is vital for a justice system that is fair and just. This article aims to explore how victims of sexual violence perceive justice within institutional and legal frameworks and whether the responses meet their needs and expectations. Using a doctrinal approach, a careful examination of various factors is needed to assess the adequacy or inadequacy of the existing legal framework. Findings revealed that multiple factors, including societal attitudes, cultural beliefs, support services, and the duration of the trial process, shape victims' perceptions of justice. In conclusion, the adversarial system of adjudication, which limits victims' participation, usually fails to meet their expectations. It is recommended that to improve on the gap in the justice system, there is a need for reforms and provision of various guidelines, improved victim support services, establishment of more specialised courts for sexual offences, creation of continuous public awareness, and education for victims on what to expect as they navigate the justice system. Once victims are recognised, their voices are heard for the crime committed against them. Through this, the justice system establishes an equitable system that supports victims.

Keywords: Justice, Victims, Sexual Violence, and Criminal Justice System

1. INTRODUCTION

Sexual violence, in all of its forms, is a crime that violates victims' rights to privacy.[1] and dignity[2], and for which victims frequently do not receive adequate justice or remedy.[3] Victims grapple with fundamental questions about justice as they struggle through the healing process.[4] Questions like these are especially difficult to answer when dealing with sexual offences because the perpetrators are often people the victims know and trust. Standard procedures in criminal law are inadequate to provide justice for crimes that are so pervasive and frequently accepted by society.[5]

The Nigerian legal system is adversarial, where the state and the defendant square off in criminal trials.[6] The Constitution's protections protect criminal defendants from the state's overwhelming power, not from other ordinary citizens.[7] As a result, the Constitution offers robust safeguards for the rights of the accused but no similar guarantees for the victims' rights. Securing justice for victims of sexual abuse has become a rallying cry for governments, activists, scholars, and the general public around the world in the struggle to eradicate sexual offences.[8] To overcome what is known as the "justice gap" for sexual offences, a wide range of policies and legislative initiatives have been made in recent decades.[9]

There has been an increase in concern for victims' rights, protection, and recognition within the criminal justice system. This has resulted in legislative and procedural changes in the

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[1] Constitution of the Federal Republic of Nigeria (as amended) Cap C23 Laws of the Federation of Nigeria 2004 (CFRN) 1999 S. 37.

[2] Ibid S.34.

[3] Jo-Anne Wemmers 'Victims' Rights are Human Rights: The Importance of Recognising Victims as Persons' *TEMIDA* (2012) (72) 71-84.

[4] Judith Herman, 'Justice from The Victim's Perspective' (2005) 11*Violence Against Women* 5, 571-602.

[5] Patricia Frazier, and Beth Haney, 'Sexual Assault Cases in The Legal System: Police, Prosecutor, And Victim Perspectives' *Law and Human Behaviour* (1996) (20) 607-628.

[6] Elizabeth Oji, 'Compensation for Victims of Crime in the Nigerian Criminal Justice System: The Need to Follow International Trends' *Nigerian Law Journal* (2015) 18(1) 122.

[7] Deborah Adeyemo, 'Recognising the Rights of Victims in The Nigerian Criminal Justice System' (2021) 21 (2) *African Human Rights Law Journal* 1058-1079.

[8] Frank Haldemann, 'Another Kind of Justice: Transitional Justice as Recognition' *Cornell International Law Journal* (2008) 41(3) 675-732.

[9] Clare McGlynn and Nicole Westmarlan, 'Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice' *Social and Legal Studies* (2019) 2, 179–201.

administration of justice that have improved victims' experiences.[10] This article examines victims' perceptions of justice in their interactions with the Nigerian criminal justice system, from their first encounter with the police to their interactions with the court, as well as their perceptions of what justice should be**.**

2. THE CONCEPTUALIZATION OF JUSTICE

Justice is one of the most fundamental concepts in law, morality, and politics. It is the ultimate and supreme aim of the law.[11] All citizens must strive for justice, and the institutions that achieve it must strive to live above the board. The word is derived from the Latin' justitia,' which means right or law. Justice has always been a significant objective in human endeavours, dating back to the beginning of human society.[12]

Black's Law Dictionary[13] defines justice as "the fair treatment of people; the quality of being fair or reasonable; the legal system by which people and their causes are judged especially the system used to punish people who have committed crimes; the fair and proper administration of the law". From the time of Plato to the present, the abstract, universal, and all-encompassing nature of justice has precluded the emergence of a consensus or satisfactory definition. The prevalent conceptions of justice vary considerably. Consequently, its nature and meaning have always been dynamic due to its multidimensionality.

According to Plato, justice is a virtue that establishes rational order, in which each part performs its appropriate role while not interfering with the proper functioning of other parts.[14]Aristotle defined justice as lawful, fair, or equal. He classified justice into two types: distributive and remedial justice. He defined distributive justice as injustice that arises when equals are treated unequally and when unequals are treated equally. Accordingly, just action is a means between acting unjustly and being unjustly treated.[15]

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[10] Arielle Dylan, Chery Regehr, Ramona Alaggia, 'And Justice for All? Aboriginal Victims of Sexual Violence *Violence Against Women* (2008)14 (16) 678–696.

[11] ***Omoju v FRN* (2008) LPELR-2647 (SC)** Tobi JSC explained what justice entails.

[12] Nyegianu Nwikpasi and Nuleera Duson, 'The Concept of Justice and Its Application in A Developing Country Such as Nigeria' *International Journal of Innovative Legal and Political Studies* (2021) 9(1) 52-62.

[13] Bryan Garner*, Black's Law Dictionary* (Thomson Reuters 2014)995.

[14] A. Dylan, (n 12).

[15] *UCH Board of Mgmt V. Morakinyo* (2014) LPELR-23416(CA).

For Rawls, justice entails the fullest possible equality of liberty for everyone regarding their fundamental rights and duties. Socioeconomic disparities, in turn, require moral justification regarding fairness and positive outcomes.[16] In Rawls's opinion, justice requires courts to interpret the premises of law so that benefits are distributed to most people while avoiding the harsh effects of legal technicalities. The maxim "Fiat Justitia Ruat Caelum," which means "let heavens fall, justice must be done," has been extensively considered by numerous religious, political, moral, and legal philosophers throughout history.

Roscoe Pound states that justice is the reconciliation of competing interests in society, secured through the legal ordering of human conduct to promote social harmony and individual welfare with the least sacrifice.[17]

Aguda argues that if the rule of law is to serve any purpose, justice must be at its end. Hence, every issue brought before a court of competent jurisdiction should be determined by the law to obtain justice, as the rule of law is not an end in itself but rather the means to the objective of achieving justice. Justice is achieved according to the principles of social justice when equals are treated relatively and unequals are treated unfairly.[18] The proper administration of justice by the courts is a crucial aspect of the justice system for victims. Justice is said to be a three-way process: justice for the accused, the victims, and society.[19] The criminal justice system operates through a structured set of guidelines and a well-established legal framework. It begins with the police investigating the matter and, upon establishing a prima facie case, forwarding the case file to the prosecution. The prosecution then initiates legal proceedings by arraigning the defendant in court. From this point, the adjudicative process formally begins. After hearing evidence from both the prosecution and the defence, the court delivers a judgment, either convicting and sentencing the defendant or issuing a dismissal if there is no case to answer.[20]

In his influential theory of justice, Amartya Sen argues that a theory can be valuable and practical even if it does not prescribe the exact form of a perfectly just society or flawless institutions. According to Sen, justice should be evaluated by ideal standards and its impact on real lives. In

[16] John Rawls, *A Theory of Justice* (Clarendon Press, Oxford 1972) 9.
[17] Roscoe Pound,*Justice According To Law (*Yale University Press, New Haven 1951) 98.
[18] Akinola Aguda, *The Crises of Justice* (Eresu Hills Publishers, Akure 1986) 49
[19] *Nwude V. FRN & Ors (*2015) LPELR-24647(CA).
[20] H Clark, *A Fair Way to Go. In Rape Justice* (Palgrave Macmillan, London 2015) 18–35.

light of this, non-punitive remedies within the criminal justice system are often seen as inadequate, especially from the perspective of victims. These remedies may fall short in addressing the depth of harm and trauma experienced by victims as a result of the defendant's actions, thereby raising important questions about what truly constitutes justice in practice.[21]

3. VICTIMS OF SEXUAL VIOLENCE AND THEIR PERSPECTIVES ON JUSTICE

Victims whose rights have been violated seek redress through the criminal justice system and are given the status of nominal complainants, not parties in the criminal trial. They are dissatisfied that the proceeding is framed around the defendant, not them as victims.[22] Once they complain and the prosecution receives the investigation reports, the case is determined in a legal contest between the state and the defence. This relegates the victim to a witness role at the periphery of the process, there as a tool of the state without special consideration in their own right. [23] In the Nigerian criminal system, the state, not the victim, is considered the injured party, and the state, not the victim, has the exclusive right to take action against the offender. As the agent of criminal justice, the state codifies standard rules and procedures for establishing guilt and protecting the innocent. The state also establishes uniform, quantifiable standards of punishment to be applied reasonably and rationally in proportion to the seriousness of the crime.

According to Daly, participation, voice, validation, vindication, and offender accountability-taking responsibility are the main goals of victim-survivor justice[24]. Victims of sexual violence encounter some fundamental challenges about the nature of justice as they navigate through the criminal justice system, including how the truth may be exposed and how to hold offenders accountable[25]. Furthermore, victims have expressed their dissatisfaction with criminal justice institutions due to the reality that not all victims of sexual violence have similar experiences[26]. Some behaviours may

[21] Dianne Martin, 'Retribution Revisited: A Reconsideration of Feminist Criminal Law Reform Strategies' *Osgoode Hall Law Journal* (1998) 36 (1)151-188.

[22] Kathleen Daly, Reconceptualising Sexual Victimization and Justice in I Vanfraechem and other (eds), *Justice for Victims: Perspectives on Rights, Transition and Reconciliation* (Routledge, Oxford, 2014) 378–395.

[23] Patricia Frazier, and Beth Haney, 'Sexual Assault Cases in the Legal System: Police, Prosecutor, and Victim Perspectives' *Law and Human Behaviour* (1996) (20) 607-628.

[24] Kathleen Daly, 'Sexual Violence and Victims' Justice Interests' in E Zinsstag and M Keenan (eds), *Restorative Responses to Sexual Violence Legal, Social and Therapeutic Dimensions* (Routledge, Oxford 2017) 108–139.

[25] Judith Herman, 'Justice from the Victim's Perspective' (2005) 11 *Violence Against Women* 571, 585.

[26] Robyn Holder, and Amanda Robinson, 'Claiming Justice: Victims of Crime and Their Perspectives of Justice' *International Review of Victimology* (2021) 27 (2) 129-137.

be legitimate and accepted in one culture or period but deemed inappropriate in another[27]. Since sexual violence has gained global attention, community perceptions and responses are still evolving[28]. The complexity inherent in conceptualising sexual abuse across cultures and circumstances exposes crucial gaps in victims' prevention and response[29]. In certain cultures, sexual violence is more common because of factors like gender inequity, male entitlement, lack of social services, adequate punishments, poverty, and conflict.[30] When it comes to matters of sexual interaction, women are often expected to make decisions in Western society; however, this is not the case in African culture.[31] Those who live in a society with strong gender standards, where masculine honour and entitlement are acceptable and where sexual aggression goes unpunished, are more likely to experience sexual violence.[32] As a result of societal imbalances and patriarchal practises, women who have been sexually violated are no longer deemed "virtuous," and their perceived virtue can never be regained.[33] One must first comprehend the cultural components that support sexual violence and discourage victims from seeking help to choose high-impact intervention targets.[34]

From the victims' understanding, justice is viewed as the right to be heard and treated with dignity and compensation for violating their rights as they navigate the justice system. They believe that once the matter is charged to court after investigation, the defendant will immediately be sent to prison, and the case will be disposed of in a few days. However, as they approach the adjudication process, they find that there are rules and procedures they must follow. Victims want to narrate their stories in their own way. But they realise that they have to be guided by the prosecuting

[27] Louise Edwards, Nigel Penn and Jay Winter (eds), *The Cambridge World History of Violence* (Cambridge University Press, Cambridge 2020) 168 - 186.

[28] Boris *Burghardt* and Leonie Stein, 'Sexual Violence and Criminal Justice in the 21st Century' *German Law Journal* (2021)22 (5) 691-702.

[29] Heather Littleton and David Dilillo, 'Global Perspectives on Sexual Violence: Understanding the Experiences of Marginalized Populations and Elucidating the Role of Sociocultural Factors in Sexual Violence' *Psychology of Violence* (2021) *11(*5) 429-433.

[30] Etienne Krug and others, *World Report of Violence and Health*. (The World Health Organization, Geneva, Switzerland 2002) 241-254.

[31] H Littleton, D Axsom, and M Yoder, 'Priming of Consensual and Non-Consensual Sexual Scripts: An Experimental Test of the Role of Scripts in Rape Attributions' *Sex Roles* (2006) 54, 557–563.

[32] National Sexual Violence Resource Centre, 'Global Perspectives on Sexual Violence: Findings from The World Report on Violence and Health' *A Pennsylvania Coalition Against Rape Project* (2004) 1-20.

[33]Amnesty International, 'Sexual violence against women in armed conflict: A fact sheet' (2004) <http:// www.amnestyusa.org/women/pdf/VAW_in_armed_ conflict_fact_sheet.pdf> accessed 1 May 2022.

[34] Emily Dworkin, and Terri Weaver, 'The Impact of Sociocultural Contexts on Mental Health Following Sexual Violence: A Conceptual Model' *Psychology of Violence* (2021) 11(5) 476–487.

counsel. After their evidence is chief, they are cross-examined by defence counsel, who forces them to answer a yes or no in response to their question without allowing them to explain further. Some question under cross-examination traumatises the victim as it reminds them of painful memories which could be likened to a second rape.[35]

In their explanatory note, Temkin and Barbara provide narratives used by the prosecution and the court in rape trials in the United Kingdom; the same emotional and conceptual frameworks continue to direct the criminal justice system. It is essential to state that the prosecution in court triggers painful memories, especially in victims of rape, but the court requires them to recount the event and give evidence in court. Most victims are displeased at being in the same courtroom as the defendant. A victim who has been raped desires to forget that painful experience and move on with life.[36]

Who analysed the explanatory narratives used by police, attorneys, judges, and jurors in rape trials in the United Kingdom, the same psychological conceptual frameworks continue to dominate the legal system. Sometimes, the victims may be required to limit or control things that trigger memories of the unpleasant event, which the court requires them to endure. Notwithstanding the court's requirement for physical contact between a witness and the defendant, it is not uncommon for victims to express their reluctance to be in the same vicinity as their perpetrators. A victim of sexual assault, particularly one who has experienced rape, desires nothing more than to overcome this traumatic experience.[37]

To understand justice in the context of sexual violence, the victim's experiences and insights must serve as a foundation.[38] When considering concepts of justice, engaging victim-survivors is a matter of "moral and political urgency.[39] Consequently, victims who have experienced sexual violence believe that justice should entail imposing stringent penalties on perpetrators, which may encompass a range of measures such as extended incarceration and financial restitution. It is

[35] Bruce Feldthusen, Olena Hankivsky and Lorraine Greaves, 'Therapeutic Consequences of Civil Actions for Damages and Compensation Claims by Victims of Sexual Abuse' *Canadian Journal of Women and the Law* (2000) 12 66- 75.

[36] J Temkin and B Krahé, *Sexual Assault and the Justice Gap: A Question of Attitude* (Hart Publishing, Oxford 2008) 53–72.

[37] *Ibid*.

[38] Clare McGlynn and Nicole Westmarlan,(n 10).

[39] Frank Haldemann (n 9).

important to note that each victim might have a unique understanding of what constitutes justice.[40] Victims want the offender to apologise, offer compensation or restitution, and guarantee that the violence will stop.[41] Victims look for a procedure that provides them a meaningful voice, validates them in their community, and acknowledges the harm they have undergone from both the perpetrator and their community, not one that reinforces their victim status.[42]

Additionally, victims need affirmation from their community, that is, for both the offender and their community to acknowledge the harm that has been done to them away from a punitive stance, with some recognising the importance of criminal culpability.[43] A guilty verdict serves as a deterrent since it prevents the perpetrator from committing the offense again.[44] For victims to perceive justice has been served, they must be recognised. Along with recognition comes the expectation of having one's rights respected. When interacting with criminal justice institutions, it is essential to identify the gravity of the offence and the dignity of the individual whose rights were violated. Waldron contends that dignity is fundamentally tied to a person's social standing; this conception embodies the idea that every citizen embodies the notion that every person holds a status that entitles them to a certain level of recognition and respectful treatment. It fosters expectations that individuals will be regarded and treated in ways that reflect and affirm their inherent worth as social and moral community members.[45]

The victim's perspective on justice places a premium on the elimination of sexual violence and the advancement of education as a mechanism for social change. In essence, they strive for a society that recognises the adverse effects of sexual violence and works conscientiously to eradicate it.[46] The aim of justice should always be to restore the victim's dignity, regardless of whether the victim

[40] Ibid.

[41] Bronwyn Naylor, 'Effective Justice for Victims of Sexual Assault: Taking Up the Debate on Alternative Pathways' *University of New South Wales Law Journal* (2010) 33 (3)662 -684.

[42] Kathleen Daly, and Sarah Curtis-Fawley, 'Restorative Justice for Victims of Sexual Assault' in K. Heimer and C. Kruttschnitt (eds), *Gender and Crime: Patterns of Victimization and Offending* (New York University Press, New York 2006) 230 - 256.

[43] Judith Herman, 'Justice from the Victim's Perspective' *Violence Against Women* (2005) (11) 571- 585.

[44] Nicola Henry, 'The Law of The People: Civil Society Tribunals and Wartime Sexual Violence' in P Anastasia, N Henry and A Flynn (eds), *Rape Justice: Beyond the Criminal Law* (Palgrave MacMillan, Basingstoke, 2015) 200–217.

[45] Jeremy Waldron, 'Dignity and Defamation: The Visibility of Hate' *Harvard Law Review* (2010) (123) 1596–1657.

[46] S. Caroline Taylor and Caroline Norma, 'The 'Symbolic Power' Behind Women's Reporting of Sexual Assault Crime to Police' *Feminist Criminology* (2012) 7 (1) 24-47.

has a history of sexual abuse. Recognising victims as more than mere victims, survivors, or witnesses is necessary to integrate them into the justice system.

4. VICTIMS' EXPERIENCES WITH THE CRIMINAL JUSTICE SYSTEM

The experiences and perceptions of victims must serve as the cornerstone of any effort to comprehend justice in the context of sexual violence.[47]. Given this, it is essential to define the Criminal Justice System (CJS) to gain a better understanding. The CJS refers to government institutions and mechanisms that seek to apprehend, prosecute, punish, and rehabilitate criminal offenders. It is a body of government agencies, organisations, and institutions whose goals include responding to crimes and offenders through a variety of criminal sanctions, including deterrent, rehabilitative, and restorative justice, as well as preventing future crimes through a variety of measures and mechanisms and protecting and supporting victims of crime.[48]

The biggest surprise for victims seeking justice through the criminal justice system was realising how little their cases mattered. The victims frequently had the mistaken expectation that the law enforcement agencies would be primarily interested in protecting their interests because the crimes had such a significant impact on their lives. They had a hard time realising the case was about the defendant, not about them, and that was the main point. Following the filing of their complaints and the transfer of the prosecution's initiative, their cases were decided in the legal battle between the state and the defence lawyer, and they were relegated to a supporting witness position, serving only as the state's tool and receiving no special consideration in their own right.[49] Several victims viewed their minor status in the justice system as a humiliation that was all too evocative of the initial crime.

While being a victim of sexual assault may be a terrible and unpleasant experience, the criminal justice system can have a significant impact on victims' experiences. Victims may feel violated, fearful, enraged, or vulnerable. The criminal justice system seeks to assist victims in their pursuit of justice while also holding offenders accountable for their actions. Yet, victims' experiences can vary depending on a variety of conditions, and navigating the criminal justice system can be

[47] Judith Herman (n 44).
[48] ibid.
[49] Jo-Anne Wemmers, 'Victims' Experiences in The Criminal Justice System and Their Recovery from Crime' *International Review of Victimology* (2013) 19 (3) 221-233.

difficult and confounding for victims.[50] The nature of Nigeria's criminal justice system poses challenges for victims' voices and opinions to be heard. Even though victims are most affected by crimes, the criminal justice system frequently gives them the least input. The type of offence that was committed, its gravity, the victim's level of involvement in the case, and the resources the victim has access to are a few of the variables that might impact how they experience the criminal justice system. The criminal justice system may be more challenging for victims of violent crimes like assault or rape than for victims of property crimes like theft or vandalism. The offender or their accomplices may intimidate or retaliate against victims directly involved in the case, such as witnesses, creating further difficulties. [51] The Nigerian criminal justice system can be challenging and distressing for victims of sexual assault. The system is plagued by various challenges that may cause victims to lose confidence and hesitate to report the crime. Notwithstanding legislative efforts to improve the rights and protect victims of sexual violence in the criminal justice system, clinical observations, as well as research and practice literature, continue to imply that encounters with the justice system are harmful to victims.[52] The Nigerian constitution does not explicitly provide victims' rights in their interactions with criminal justice institutions[53]. As a result of giving the accused's rights precedence over those of the victims, the justice system unfortunately cannot be fully characterised as fair, equitable, or just. Nonetheless, the system may be improved to ensure that society is balanced[54]. There is a need to establish best practices for strengthening victim satisfaction, promoting victim well-being, and encouraging victims to participate in or remain involved in the criminal justice system[55]. This would provide stakeholders with a better understanding of victim interactions with the criminal justice system and the best practices for improving victims' experiences within the criminal justice system.[56]

[50] Ibid.

[51] Ibid.

[52] Cheryl Regehr and others, 'Victims of Sexual Violence in the Canadian Criminal Courts' *Victims and Offenders* (2008) 3 (1)99–113.

[53] K. Anele, 'The Criminal Justice System and Ordeal of Victims of Crime in Nigeria: A Preliminary Observation' *African Journal of Philosophy* (2006) 8(2) 28-32.

[54] Andrzel Marek, 'Crime Victim and Criminal Justice Administration' *World Society of Victimology Newsletter* (1983) (3) 5.

[55] Deirdre Healy, *Exploring Victims' Interactions with The Criminal Justice System: A Literature Review* (Irish Department of Justice and Equality, Dublin 2019) 69- 79.

[56] Nicholas Katzenbach, *The Challenge of Crime in a Free Society: A Report* (United States Government Printing Office, Washington D. C., 1967)7.

Victims who have never had any personal contact with the criminal justice system must understand its meaning, functions, and operations.[57] Although the CJS is one of society's most potent organisations and is responsible for upholding the laws, regulations, and standards that govern us, it has flaws. Like any other social institution, it is susceptible to malfunction, bias, and harm.[58] Fundamentally, criminal justice institutions that the victims interact with include the police, the courts, and prisons or correctional facilities. To comprehend how the criminal justice system functions, one must be familiar with how each of its agencies interacts, including how the police function, what they do, and how they make decisions; how the court system is organised and how judges make decisions; and how the penal system is structured.[59]

The response of the criminal justice system to cases of sexual violence has been well documented as having systemic flaws. It is critical to consider the many steps that must be followed when reporting a case of sexual assault, as well as the probable interactions that a victim may have with the criminal justice system at each stage.[60]

The trajectory of a victim's experience commences with the occurrence of a criminal act. Subsequently, it diverges into two potential paths contingent upon the victim's decision to initiate legal proceedings by filing a police report. Given that, just a small number of crime victims choose to report the crime and go through the criminal court system; crimes witnessed by such victims are included in the "black figure" of crime statistics—their inability to report results in their being excluded from participation in the judicial process entirely.[61]

The first step in a victim's quest for justice through the criminal justice system is to report the crime to the appropriate authority, usually law enforcement agencies.[62]Therefore, the first interaction with the victim must be positive because it establishes the tone for the criminal justice

[57] Miriam Cohen 'Victim's Participation Rights Within the International Criminal Court: A Critical Overview' *Denver Journal of International Law and Policy* (2009) 37 (3) 351 -377.

[58] P. Cassell and S. Joffee, 'The Crime Victims' Expanding Role in A System of Public Prosecution: A Response to The Critics of The Crime Victims' Rights Act' *Northwestern University Law Review Colloquy* (2011) 105, 164–183.

[59] A. Dambazau, *Criminology and Criminal Justice* (Nigerian Defence Academy Press, Kaduna, Nigeria 1999) 173-211.

[60] D. Healy, *Exploring Victims' Interactions with The Criminal Justice System: A Literature Review* (Irish Department of Justice and Equality, Dublin 2019)11 – 79.

[61] United Nations Office on Drugs and Crime, Victims and Their Participation In The Criminal Justice Process(2019)<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-11/key-issues/5--victims-and-their-participation-in-the-criminal-justice-process.html >accessed 2 February 2022.

[62] D. Healy (n 61).

process and may also represent the victim's overall experience with the system. In situations where the case does not progress beyond the reporting and investigation stage, how the victim is treated at this point is crucial to how satisfied they are with the outcome.[63]

To improve victims' interactions with the police, a variety of strategies have been undertaken by police departments, including procedures that adhere to the rules of procedural justice, efficient information sharing and communication techniques, and referrals to victim support agencies. Victims ' satisfaction and willingness to pursue a case can be influenced by the quality of police-victim interactions, which serve as the victim's initial point of contact with the criminal justice system. Regrettably, many victims have complained about police officers who are more interested in the bail money than in investigating the case.[64] To improve these experiences, officers must fully understand the dynamics and impacts of victimisation and undergo specialised training to ensure that police involvement does not worsen the trauma of the offence. It is also crucial to note that referral to victim support services has become an essential component of the initial police response to victims.[65]

After reporting the crime, victims will encounter criminal justice professionals who will investigate and prosecute their cases. At this point, measures have been put in place to improve victims' interactions with investigators and prosecutors; prosecutors must consider victims' perspectives in decision-making, treat victims with dignity and respect, and provide regular case updates.[66] They also review the evidence presented by victims and provide information on court procedures. The investigation and prosecution stages of the criminal justice system revealed evidence that the following practices have the potential to improve victims' interactions with investigators and prosecutors: effective communication and information sharing, sensitive treatment and compassion to show victims that professionals care about their problems, and interagency collaboration to provide victims comprehensive services.[67]

[63] L. Siegel *Criminology: The Core* (2nd edn. Thomson Wadsworth, Belmont 2005) 60.
[64] Wahab Egbewole and I Imam, 'Nigerian Judiciary and The Challenge of Corruption: Islamic Options as Panacea' *Journal of Islam in Nigeria* (2015)1(1) 84-103.
[65] I. Madoc-Jones, C Hughes, and K Humphries, Where Next for Victim Services in England and Wales? *The Journal of Adult Protection* (2015)17(4) 245-257.
[66] Mugambi Jouet 'Reconciling the Conflicting Rights of Victims and Defendants at The International Criminal Court' *Saint Louis University Public Law Review* (2007) 26(6) 249-307.
[67] D. Healy (n 61).

The trial stage comes next, where victims are accorded the status of witnesses in most jurisdictions, including Nigeria. Research shows that many victims become victims again due to the adversarial nature of court procedures. At this point, implementing and protecting victims' rights and providing practical support, information sharing, and communication is crucial for enhancing victims' interactions with the courts. To improve the court experiences of victims and witnesses, there is a need for better case management to increase efficiency, greater information availability to encourage victim knowledge of court procedures, and a focus on procedural justice to minimise feelings of marginalisation.[68]

Every stage of the criminal justice system and every victim acknowledged that efficient communication and information sharing emerged as a critical, unifying factor. Victims of sexual violence typically report a lack of communication, particularly after the initial police encounter. Victims deserve information on criminal justice proceedings, their rights as victims, and victim support services. The fact that victims receive regular updates on their cases, mainly if their opinions were considered during criminal proceedings, is crucial.[69]

The criminal justice system can dispense justice swifter by enacting guidelines and policies to assist victims through the criminal trial. The victim's rights must be adhered to by providing accurate information about their case at every stage. Having been traumatised, the victim should feel safe and cared for by the support service provided. They should be treated with respect at every stage, and the right to dignity should be upheld. Showing support and care to the victim will assist them in healing from the harm they have suffered.

5. RECOGNITION, DIGNITY, AND VOICE IN VICTIMS' JUSTICE

In criminal proceedings in Nigeria, the aggrieved party is considered the state rather than the victim. Only the state can initiate a charge or information against the perpetrator.[70]. The state assumes the role of the arbiter of criminal justice by instituting standardised norms and procedures that facilitate the determination of guilt and protect the innocent. The state establishes standardised and measurable penalty guidelines that are applied fairly and justly based on the gravity of the

[68] R Holder, 'Satisfied? Exploring Victims' Justice Judgments' (2015) *Crime, Victims and Policy: International Contexts, Local Experiences*, 184-213.
[69] D. Healy, (n 61).
[70] CFRN 1999 (as amended) ss. 174 and 211; *FRN v Adewunmi* (2007) 10 NWLR (Pt. 1042) 399 SC.

offence.[71] The prevailing belief is that contemporary state-based criminal justice systems are more effective than traditional communal or private forms of justice.[72]

The attainment of justice for individuals who have suffered from sexual violence necessitates the imposition of severe repercussions upon the offender. The concept of consequences implies that a particular action must yield a corresponding effect or outcome. In a nutshell, the individual responsible for the action must experience consequences for their behaviour. The concept of consequences pertains to the societal understanding of justice as the punishment of an individual found guilty of wrongdoing through the criminal justice system, commonly using a retributive incarceration term. Although the significance of consequences may vary for different individuals, it is essential to note that they extend beyond a perpetrator's mere conviction and imprisonment. While the prevention aspect is linked to a defendant's conviction, for many victims, justice is synonymous with a verdict of guilt. The objective is not solely to incarcerate the accused but to ensure non-recurrence. Retribution is a commonly held notion of justice among individuals who have experienced victimisation.[73]

Recognition is another principle at the heart of justice for victims. Recognition is a form of acknowledgement that conveys support for victims, which is more than "being believed.[74]"It covers the acknowledged experience's relevance and influence on the victim-survivor and society. Offenders must recognise the harm caused by their behaviour, and a sense of justice depends on getting validation.[75] Recognition is essential to victims' sense of justice and is more than just the relationship between citizens and the state. It encompasses acknowledgment of the significance and nature of the injury and an attempt to remedy it. Outcomes of the conventional criminal justice system do not necessarily equate to a sense of Justice, as they do not address issues such as

[71] In the case of *Romrig (Nig) Ltd. v. FRN* (2018) 15 NWLR (pt. 1642) 284 at 308, the Supreme Court of Nigeria held that the Attorney-General of the Federation has an unfettered right to institute a charge before a court.
[72] J. Herman, (ed), *Sexual Violence in Conflict Zones: From the Ancient World to The Era of Human Rights* (University of Pennsylvania Press 2011) 1-5.
[73] C. McGlynn, J Downes, and N Westmarland, 'Seeking Justice for Survivors of Sexual Violence: Recognition, Voice and Consequences' in E Zinsstag, and M Keenan (eds), *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions* (Routledge, Abingdon 2017)171-191.
[74] Deborah Adeyemo, (n 8).
[75] C. McGlynn, (n74).

humiliation, lack of respect, and moral injury. Recognition is also about the actions and responses of individual perpetrators, friends, families, and communities.[76]

Along with being recognised, victims must be treated with dignity.[77]. While acknowledging the importance of procedural justice for victims, they recount numerous instances of criminal justice officials neglecting to treat them with dignity. In addition to process and procedure adherence, victims want to be treated with dignity. Victims desire to be treated with compassion and to be recognised as persons who have been harmed. Therefore, this is not merely a matter of enhancing policies and procedures, however essential these are. It is about treating victims as it pertains to being informed, heard, and regarded thoughtfully. This 'simply' necessitates sensitive, respectful, and dignified treatment.[78]

Voice has traditionally been crucial to how victims of sexual violence define justice. Giving victims a voice entails enabling them to express their experiences in their own words. Being a vocal participant in the criminal justice system is essential since many victims feel disenfranchised by it. Thus, voice can be considered a metaphor for power, the ability to decide how your future will be and to ensure that decisions are made with the participation of victims.[79]

Prevention of sexual violence is vital to victims' sense of justice since prevention entails more than just individual rehabilitation or deterrence, but also a clear educational goal.[80] The interests of victims in social and cultural transformation, the prevention of sexual assault, the requirement for support, and the concept of dignity as a fundamental value were also reflected in victims' views of justice. These components, along with recognition, voice, and consequences, make up the diverse viewpoints that make up the concept of justice for sexual assault victims.

[76] R. Holder, 'Satisfied? Exploring Victims' Justice Judgments' *Crime, Victims and Policy: International Contexts, Local Experiences* (2015) 184-213.
[77] Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 34.
[78] K. Daly, Reconceptualising Sexual Victimisation and Justice. In: Vanfraechem I, Vanfraechem, I., Pemberton, A., and Ndahinda, F., *Justice for Victims: Perspectives on Rights, Transition and Reconciliation* (Routledge 2014)378–395.
[79] Chery Regehr and Ramona Alaggia, 'Perspectives on Justice for Victims of Sexual Violence' 1 *Journal of Evidence-Based Practice* (2006) 1, 33-46.
[80] Ibid.

6. RECOMMENDATIONS

To enhance the perception of justice by victims of Sexual violence within the criminal justice system, the following recommendations are made;

1. Victim support needs to be strengthened by providing guidelines or practice directions to ensure victims receive adequate information about the case at every stage of the criminal process. Establishing specialised SGBV courts in all states for sexual offences could expedite trials and reduce the burden on victims.

2. The sexual violence unit at the police station should have a provision for a victim advocate who would inform the victim of the processes involved in the trial process. A victim support unit needs to be part of the gender unit.

3. There is a need to amend the Violence Against Persons Prohibition Act 2015 to include a timeline for investigation, prosecution, and adjudication of sexual offences. Reducing delays is vital in fostering a just and responsive criminal justice system.

4. For proper access to justice, every Local Government Area should establish a Sexual Assault Referral Centre to provide services to victims; there is also a need to expand legal aid, counseling, medical care, and shelter for victims, especially those in rural areas.

6. CONCLUSION

Perception of justice among victims of sexual violence is based on positive outcomes such as conviction and punitive sentencing on a defendant who violated their right to dignity. Victims seek recognition as the ones who have suffered harm; they seek restoration for violating their dignity; victims desire to be heard and actively participate in the trial, and they seek prevention from further harm. In seeking to understand justice in the context of sexual violence, the experiences and insights of victims must be fundamental.

THE TAX REFORM BILL AND THE NIGERIA REVENUE SERVICE: NEEDS, NECESSITY AND NATIONAL INTEREST

Chibuzo Mercy Onwuzuruoha* **and Omoniyi Bukola Akinola****

Abstract

On October 3, 2024, the President of the Federal Republic of Nigeria, Bola Ahmed Tinubu, transmitted to the National Assembly, the Tax Reform Bill for consideration. The Tax Reform Bill comprising Nigerian Tax Bill (NTB) 2024; the Nigerian Tax Administration Bill (NTAB) 2024; the Nigeria Revenue service Establishment Bill (NRSEB) 2024, and the Joint Reserve Board Establishment Bill (JRBEB) 2024 seeks to consolidate multiple Tax laws in Nigeria into a single Act, thereby promoting efficient tax administration. The Nigeria Tax Bill vests upon the Nigeria Revenue Service powers to collect all national taxes, including royalties which is being collected by the Nigerian upstream Petroleum Regulatory Commission (NUPRC) and excise duties, import VAT etc. which is being collected by Nigeria Customs Service. This paper examined the need, necessity and the national interest of the bill, the prospects and the pitfalls of a single tax net for Nigeria. This paper finds that the imperfect nature of our current tax administration has made this reform not only a need but a necessity to promote National interest. This paper noted that there are surmountable challenges no doubt, but the payoff outweighs the challenges. This paper employs a doctrinal method of legal research which involves desk and library research. It recommends among others a strategic public awareness of the importance of the bill and massive investment in technology to actualize the lofty objective of the bill.

Keywords*:* Tax Reform Bill, Nigeria Revenue Service, National Interest

3. Introduction

Taxation in the Nigerian economy is a significant system that helps in the generation and redistribution of revenue to provide public services and improve the economy. Nigeria enacted laws that govern and regulate taxation in the different sectors of the economy. Before now, the Nigerian Government and International bodies[1] have described the Nigerian Tax system as one

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[1] Edori Daniel Simeon, EdoriIniviei Simeon, Idatoru Alapuberesika Roberts Issues and Challenges Inherent in the Nigerian Tax System. *American Journal of Management Science and Engineering*. Volume 2, No. 4, 2017. Pp. 52-57. Doi:10.11648/j.ajmse.20170204.11. Accessed 6 January 2025

riddled with inefficiency, low compliance rate and a narrow tax base.[2] To drive the tax reform, on October 3, 2024, the President of the Federal Republic of Nigeria, Bola Ahmed Tinubu, transmitted the Tax Reform Bills to the National Assembly for their consideration.[3] The aim of the Tax Reform Bill among other are to promote uniform procedure for efficient tax administration, facilitation of tax compliance and streamlining of tax laws.[4] These bills are the Nigerian Tax Bill (NTB) 2024; the Nigerian Tax Administration Bill (NTAB) 2024; the Nigeria Revenue service Establishment Bill (NRSEB) 2024, and the Joint Reserve Board Establishment Bill (JRBEB) 2024.

The Nigeria Revenue Service bill seeks to replace the Federal Inland Revenue Service (FIRS) The Nigeria Revenue Service bill among other duties is saddled with the responsibility of assessing persons including corporations, companies, partnerships enterprises and individuals chargeable with tax; collect or recover tax assessed, enforce payment of taxes and remit tax collected under the provisions of this Act or any other law, into designated accounts; account for all revenue accruing to the Government[5] etc. This paper shall discuss The Tax Reform Bills with emphasis on the need and necessity of the Reform in the National interest. The first part shall discuss the conceptual framework for Tax Reform bills 2024, the second part shall discuss the Tax Reform Act and the need for a single revenue collection agency, the third part shall discuss the prospects and pitfalls of the bill, the fourth part shall be the conclusion and recommendations.

4. CONCEPTUAL FRAMEWORK FOR THE TAX REFORM BILL 202

2.1 OVERVIEW OF THE TAX REFORM BILL

The Nigeria Tax bill is a legislation whose objective is to provide a unified fiscal legislation governing taxation in Nigeria.[6] It sets out to streamline all taxes in the Country administered by various laws and consolidates them into a single law. The Nigeria Revenue service will be a centralized agency for tax collection nationwide.[7] Some provisions of the bill are stated hereunder.

[2] https://www.elibraryimf.org "Nigeria's Tax Revenue Mobilization: Lessons from Successful Revenue Reform Episodes: Nigeria "Assessed on 21st April, 2025

[3] Businessday.ng "President Ahmed Tinubu Transmitted the Tax Reform Bills to National Assembly for consideration in October 2023" Assessed on 21st April, 2025

[4] https://ng.andersen.com "Nigeria Tax Reforms: Analysing the Revised Tax Laws and Potential impact on Businesses and Individuals" Assessed on 21st April, 2025

[5] Nigeria Revenue Service (Establishment) Bill, 2024. S. 4(1) (a – t)

[6] Nigeria Tax Bill, 2024. Clause.1

[7] The Nigerian Tax Administration Bill 2024. Clause.3

The Bill adjusted the personal Income Tax by providing for 0% Personal Income Tax for incomes under ₦800, 000. and progressive rates with a maximum of 25% for earnings above ₦50 Million. [8]The bill also provided for Company Income Tax exemption for Small and Medium Enterprises with turn over below ₦50 million.[9] The Bill provides for a gradual VAT increase from 7.5% to 15% by 2030, imposed development levy on corporations and Excise taxes on telecommunications, gaming and lotteries.[10]

The bill further exempts an individual from paying tax on the proceeds of the sale of his residential property or land adjoining his residential property or land up to a distance of 1 acre.[11] The Bill exempts compensation paid to individuals for personal injuries, such as loss of employment, defamation, libel slander, etc, from capital gains tax once the amount is ₦50 Million or below. Above ₦50 Million, only the excess constitutes chargeable gains.[12]

The Bill indirectly reduces the taxable income of companies by increasing the deductions allowed from the company's gross earnings before ascertaining the company's profit, which is eventually taxed. The bill also eliminates a minimum income tax of around 1% of gross earnings hitherto imposed on companies that did not declare profit.[13] Financial institutions are now mandated to furnish tax authorities with details of individuals whose monthly cumulative transactions amount to ₦25 million or more so as to bring in more people into the tax net[14] A supremacy clause was inserted which will make the bill when it comes into force the Nigeria's supreme legislation on Tax.[15] The Tax Administration Bill proposes a centralized system for registration, filing, and dispute resolution to reduce bureaucratic inefficiencies. The Joint Revenue Board Establishment Bill replaces the Joint Tax Board with Joint Revenue Board and introduces a Tax Ombudsman to ensure fairness.[16]

[8] Nigeria Tax Bill, 2024. Clause.58
[9] Nigeria Tax Bill, 2004. Clause.13 (2) (a)
[10] Ibis, s 59
[11] Ibid s 51
[12] Ibid. s.50
[13] Ibid Clause.20(1) (a)-*i)
[14] Ibid Clause. 51
[15] The Nigerian Tax Bill. Clause.20
[16] The Revenue Board of Nigeria Establishment Bill. 2024 s.3

The Nigerian Revenue Service Bill provides for the Nigerian Revenue Service that will function like the FIRS. It also adjusts revenue – sharing formula as follows (10% for federal government, 55% for State government and 35% for local government)[17]

2.2 THE NIGERIA REVENUE SERVICE BILL.

This bill seeks to replace the Federal Inland Revenue Service Act, No. 13, 2007 and establish the Nigeria Revenue Service with the responsibility of assessing, collecting and accounting for Federal revenues. It is a centralized agency for tax collection nationwide. A brief discussion of the Federal Inland Revenue Service may provide insight into the operations of the Nigeria Revenue Service.[18] The FIRS was established by the Federal Inland Revenue Service (Establishment etc.) Act of 2007. This body took over from the former Federal Board of Inland Revenue (Established under (CITA) 1990)[19] which was dissolved by the Act[20]. The FIRS is the Federal Government's operational agency in charge of assessing and collecting relevant taxes for the Federal Government. The functions[21] of the FIRS as prescribed in the Act include among others:

(c) To collect, review and pay to the designated account, any tax recognised by the Act or any other law or enactment

(d) To assess persons including companies, enterprises and individuals chargeable with tax

(e) To assess, collect and enforce payment of taxes as may be done to the government or any of its officials

(f) To collaborate with relevant ministries and agencies, for the review of the tax regimes and promote the application of tax revenue for the stimulation of economic activities and development

(g) To make, from time to time , a determination of the extent of financial loss, such other losses by government arising from tax evasion and fraud and such other losses (or revenue forgone) arising from tax waivers sand other related matters.

[17] The Nigerian Tax Administration Bill. Clause.77
[18] Federal Inland Revenue (Establishment etc) Act 2007. s. 1
[19] Companies Income Tax Act 1990. s.1
[20] Ibid. s. 62
[21] Federal Inland Revenue (Establishment etc) Act 2007. s. 8

The FIRS also has a Board, whose power is to provide general policy guidelines relative to the function of the service, among other related matters.[22] The Nigeria Revenue service on the other hand will be a centralized agency for tax collection nationwide. The Nigeria Tax Bill vests upon the Nigeria Revenue Service powers to collect all national taxes, including royalties which is being collected by the Nigerian upstream Petroleum Regulatory Commission (NUPRC) and excise duties, import duties, etc. which is being collected by Nigeria Customs Service. It provides a framework for collaboration among revenue agencies across the three tiers of government including optional powers to delegate tax collection functions among themselves. It also empowers the Accountant General of the Federation to deduct any unremitted revenue due from government to ministries, department and agencies and from the budgetary allocation.[23]

Under Federal Inland Revenue Act, taxpayers are required to file their returns manually or electronically through a designated tax office. The FIRS relies heavily on physical documentation such as bank statement and receipts, to verify income and expenses. This process can be time – consuming and prone to errors, particularly for small businesses and individuals who may not have access to sophisticated accounting software. The coming into force of the Nigeria Revenue Service as the centralized agency for collecting of revenue may be the answer to the logistics difficulties in revenue collection in Nigeria.

2.3 NIGERIA TAX ADMINISTRATION BILL

The objective[24] of the Bill is to provide a uniform procedure for a consistent and efficient administration of tax laws in order to facilitate tax compliance by taxpayers and optimize tax revenue.

The preamble to the Bill proposes the enactment of legislation aimed at standardising the assessment, collection, and accounting of revenue accruing to the federation, federal, State and local government. It prescribes the powers and responsibilities of tax authorities and addresses related matters.

[22] Ibid. s.7
[23] Nigeria Revenue Service (Establishment) Bill, 2024. Clause (6)
[24] Nigeria Tax Administration Bill 2024. Clause 1

The bill consolidates administrative provisions from existing tax laws, including Companies Income Tax Act (CITA), Personal Income Tax Act (PITA), Petroleum Profits Tax Act (PPTA), Value Added Tax Act (VAT), Stamp Duties Act, and Capital Gains Act (CGT) Act. When the bill becomes law, it will serve as the primary legislation for the administration of the Nigeria Tax bill.[25]

HIGHLIGHTS OF THE BILL

The bill provides for mandatory registration of all tax payers with the relevant tax authority and obtaining of Tax payer Identification Number (Tax ID)[26] and this must be issued within two working days[27], or an explanation for the delay must be provided. This provision imposes a strict deadline on the tax authority and places a burden on them to be efficient.

The bill proposes a revised VAT Distribution Formula. It proposes 10% for federal government, 55% for State government and the Federal Capital Territory, 35% for local government. 60% of the state and local government allocation will be distributed based on derivation linked to actual consumption within each jurisdiction.[28] To operationalize this, companies filing VAT returns will be required to submit a detailed sales schedule providing a state-by state breakdown of sales. This reform is designed to create a fairer and more consumption based distribution of VAT revenue.[29] This position has not gone down well with some states. It has been vigorously opposed especially on the issue of derivation, arguing that it may not be beneficial to them. Alternative proposals for the sharing formula are discussed by the relevant stakeholders.[30]

The bill proposed increase in VAT rate from the current 7.5% to 10%, and ultimately to 15% by 2030.[31]

The reform also increases the VAT exemption threshold for small businesses from ₦25 million to ₦50 million,[32] removing VAT obligations for a larger segment of businesses and directly benefitting their low-income customer base. The VAT rate increase will apply only to 18% of

[25] Ibid
[26] Ibid. Clause 4 % 5
[27] Ibid. Clause 7(2)
[28] Ibid Clause 77
[29] The Nigeria Tax Administration Bill. Clause 22(2)
[30] Dailytrust.com "Northern Reps raise Fresh concerns over Tax Reform Bills" Assessed on 21st April, 2025
[31] Nigeria Tax Bill. Clause 59
[32] The Nigeria Tax Administration Bill. Clause 22

consumption items, primarily targeting luxury goods such as beverages, entertainment, and cars which are usually consumed by higher income earners.

The Tax Nigeria Tax administration bill made provision that is aimed at expanding the tax net and increasing tax revenue. This it seeks to achieve by the introduction of mandatory tax registration by all taxable persons and the issuance of a tax identification card.[33] The tax identification card is intended to replace tax identification number and would be a requirement to open or operate an account with bans, stocking broking firms or other financial institutions.[34] The Tax authorities are empowered to independently register and assign a Tax Identification Number) TIN) to any person obligated to obtain a TIN who fails to do so. This grants the tax authority the discretion to on its own volition, register such individuals for tax purposes, ensuring compliance with registration requirements.[35]

The Bill also provides that a taxable person shall notify the relevant tax authority of a change in its particulars within 30 days of the occurrence of the change. Such notification is required for a change in name, including trading name, location of business, telephone numbers or e-mail address, and registered address.[36] Failure to notify the tax authority of a change in address within 30 days of such change, or where a taxable person gives a wrong address or fails to comply with the requirement for notification of permanent cessation of trade or business would occasion an administrative penalty.[37] This position may discourage foreign investment in Nigeria.

Also in addition to the existing obligation for employers to remit income taxes and file returns under the Pat-As-You-Earn (PAYE) scheme, the Nigeria Tax Administration Bill introduces a requirement for employees to file annual tax returns on their total income. Unlike PAYE returns, which cover only employment income, these returns will capture both employment and non-employment income, thereby contributing to increased tax revenue. The bill also seeks to introduce

[33] The Nigeria Tax Administration Bill, Clause 4
[34] Ibid. clause 8
[35] Ibid clause 7
[36] Ibid clause 9
[37] Ibid clause 106

monthly returns for non-resident Airlines and Shipping Companies.[38] It made provision for a comprehensive anti-avoidance measures aimed at curbing tax avoidance schemes.[39]

Also, the bill seeks to mandate relevant tax authorities to share relevant tax information with each other and conduct joint audits.[40] This will harmonise tax enforcement efforts by relevant tax authorities and assist in effective tax enforcement.

The bill seeks to empower the Nigerian Revenue Service, [41] to introduce an electronic fiscal system for the purpose of recording taxable supplies, and taxable persons would be mandated to deploy any such system introduced by the NRS.[42] This will enable the NRS t efficiently track taxable supplies and collect VAT.

The Bill provides for filing of returns by taxable persons enjoying incentives administered by the relevant tax authorities, including incentives provided under chapter eight and clause 60 of NTB. In addition to annual returns, shall submit Annual Tax incentives returns in the form prescribed by the Service covering income tax and any incentive other than those which are generally available to all taxpayers[43]

The Bill provides for Administrative penalties for a taxable person who fails or refuses to register for tax. Such a person will be liable to pay a) ₦50,000 in the first month in which the failure occurs; and b) ₦25,000 for each subsequent month in which the failure continues. Where a company awards a contract to an unregistered person, such a company shall be liable to pay an administrative penalty of ₦5,000,000.[44]

The Bill further provides that a a person who has an obligation to collect, deduct or withhold tax under the relevant tax laws, and fails to collect, deduct or withhold the tax due is liable to an administrative penalty of 40% of the amount not deducted. It is presently 10%[45]

[38] The Nigeria Tax Administration Bill, Clause 18
[39] Ibid, clause 29
[40] Ibid, clause 47
[41] The Nigerian Revenue Service is to be established by the Nigerian Revenue Service Bill to replace the Federal Inland Revenue Service.
[42] The Nigeria Tax Administration Bill, Clause 23
[43] Ibid. clause 26
[44] Ibid, clause 95
[45] The Nigeria Tax Administration Bill, Clause 100

The bill encourages an amicable resolution of tax disputes between tax payers and tax authorities provided that the guiding principle set out in the Nigeria Tax Administration bill for the resolution of such disputes are adhered to by the parties.

2.4 JOINT REVENUE BOARD (ESTABLISHMENT) BILL

The objectives of the bill is to

(a) Provide for a legal and institutional framework for the harmonisation and coordination of revenue administration in Nigeria;

(b) Provide a mechanism for efficient dispute resolution; and

(c) Promote the rights of the taxpayers.[46]

The joint Revenue Board (Establishment) bill proposes the establishment of the joint Revenue Board (JRB) to replace the current Joint Tax Board.[47]

The JRB will have expanded functions and membership, focusing on marinating a centralized taxpayer identification database in collaboration with the National Revenue Service, state internal revenue services and local government revenue committees[48]. It will also guide the accreditation of tax agents, promoting uniform standards across the nation.[49]

SOME HIGHLIGHTS OF THE BILL

The bill establishes the Appeal Tribunal (TAT)[50] with a mandate of adjudicating disputes arising from tax laws. It will replace the provisions of the Federal Inland Revenue Service Act (FIRS) when it is repealed. The transition ensures continuity with current tribunal members and ongoing proceedings seamlessly integrated into the JRB Framework

The bill expands the jurisdiction of TAT to include disputes arising from any tax laws enacted by the National Assembly or a state House of Assembly.[51] This marks a significant improvement over

[46] Joint Revenue Board of Nigeria (Establishment) Bill, 2024. clause 1
[47] Ibid. Clause 3
[48] Ibid Clause 5 (a –o)
[49] Ibid. Clause 9
[50] Joint Revenue Board of Nigeria (Establishment) Bill, 2024. clause 23
[51] Ibid. Clause 23

the previous framework, where the TAT's jurisdiction was limited to tax laws administered by the FIRS, which primarily covered federal laws. This broadened scope is acceptable since it promotes a more inclusive and harmonised approach to tax dispute resolution across all levels of government.

The bill created the office of the Tax Ombud[52]. The tax Ombud is charged[53] with addressing taxpayer complaints against tax authorities. The Ombud's functions include;

(a) Serve as an independent and partial arbiter to review and resolve complaints relating to tax, levy, regulatory fee and charges, customs duty, or excise matters,

(b) Review complaints against tax officials and authorities and resolve; it through mediation or conciliation by adopting informal, fair, and cost effective procedures;

(c) Receive and investigate complaints lodged by taxpayers regarding the actions or decisions of the tax authorities, agencies or their officials; and

(d) Enter and inspect any premises or place where any tax authority agency or official performs any functions or duty under any law imposing taxes, levies, charges and fees for the purpose of carrying out investigation.

The Tax Ombud will operate as an independent and impartial body, [54]offering services to taxpayers. However, its role[55] is largely cantered on resolution of complaints and does not extend to interpreting tax laws other than to the extent that it relates to operational, procedural, or administrative issues arising from the application of the provisions of the relevant tax law. Where agencies fail to implement recommendations without satisfactory justification, the Tax Ombud may report such matters to the National Assembly to exercise oversight functions over such recommendations.

[52] Ibid. Clause 35
[53] Ibid. Clause 37
[54] Ibid. Clause 40
[55] Ibid 40 (a- i)

2.5 Structure of Nigerian Tax System

Taxes have been defined as 'a charge, usually monetary imposition by the government on persons, entities and transactions to yield public revenue'[56]Taxes are compulsory levies that individuals and businesses must pay to the government to generate revenue for government. Nigeria operates a decentralized tax system where each level of government is independently responsible for the administration of taxes within its jurisdiction. Nigeria generate revenue to fund government expenditure through a pool of taxes from each tier of government.

Taxation is enforced by three tiers of government, the Federal, State and Local Government with each having its sphere clearly set out in the Constitution of the Federal Republic of Nigeria. The Constitution[57] clearly delineates legislative powers between the Federal Government of Nigeria and the State Government of Nigeria by providing for the legislative lists which are the exclusive legislative list and the concurrent legislative list.[58] The Federal government of Nigeria through the National Assembly has exclusive powers to make laws with respect to matters contained in the Exclusive legislative list,[59] it also has concurrent powers with the State government to make laws with respect to any matter contained in the concurrent legislative list to the extent provided by the Constitution.[60] The Federal government also has powers to make laws on any other matters as may be prescribed by any specific substantive provision of the Constitution.[61] It also exercises legislative powers with respect to the Federal Capital Territory Abuja.[62] The State governments through the State Houses of Assembly have powers to legislate on matters contained in the concurrent legislative list to the extent prescribed therein. They can also legislate on matters as may be prescribed by the provisions of the Constitution. They also have exclusive powers to legislate on matters that are not contained in either the exclusive or concurrent list (residual list). The powers to tax a subject matter is naturally ancillary or supplementary to the powers to legislate on the subject matter.

[56] https://en.wikipedia.org "Tax" Assessed on 21st April, 2025
[57] The 1999 Constitution of the Federal Republic of Nigeria (as amended)
[58] The exclusive list is set out in part 1 of the second schedule to the constitution and the concurrent lists is set out in the part 11 of the second schedule to the constitution
[59] The CFRN. (as amended) s. 4(3)
[60] Ibid s. 4 (4) (a)
[61] Ibid s.4(4) (b) and 4 (4) and part 11 of the second schedule to the constitution
[62] *Fasakin Foods (Nig) Ltd v Shosanya* (2006) 4 KLR (Pt 216) 1447

Nigeria operates a progressive tax system where an individual with a higher income pays higher taxes.[63] Taxes are levied on income, property, goods and services, and other economic activities. Taxes are a good source of revenue for the government and it is used in running the cost of governance. The Tertiary Education sector have been immensely supported through Education tax. Funds derived from the tax are used for rehabilitation, restoration and consolidation of tertiary education in Nigeria by the Tertiary Education fund. (TETFUND).[64] Also the Health sector benefits from taxes as various funding for various aspects of healthcare, including infrastructure development, personal training and service provision. These funds are important for expanding access to healthcare.[65] Taxation enables to government to plan and execute beneficial projects for the country. Taxation provides employment opportunities for the country thereby supporting economic development. A country therefore with weak tax system is a retrogressive country with poor economy and attendant lack of development.

3.0 NEEDS AND NECESSITY FOR TAX REFORM BILL

Oyedele[66] aptly captured the condition of the Nigerian Tax system and its administration in one of his statements on the condition of Nigeria's Tax system.

> *Nigeria's tax system has over time become complex, stifling growth and unable to generate the required revenue for development. This largely due to lack of policy clarity and inconsistency, obsolete and ambiguous tax laws, weak and fragmented revenue administration.*[67]

On the objectives of the reform he stated as follows:

> *The main objective of the reform is to redesign the system to support growth by addressing current challenges such as multiplicity of taxes, ambiguous and obsolete*

[63] https://cowrywise.com 'Types of Taxes in Nigeria' Cowrywise Blog. Accessed on 5 January 2025 inappropriate reference

[64] https://www.firs.gov.ng "Education Tax" Assessed on 21st April, 2025

[65] https://www.researchgate.net "Tax Revenue and Infrastructural Development of Health Sector in Nigeria" Assessed on 21st April. 2025

[66] Chairman Presidential Committee on Fiscal Policy and Tax Reform, 2023 – to date

[67] https://x.com>taiwoyedele> Taiwo Oyedele on X: Tax ReformBills-10 Most Frequently: Asked Questions. Accessed 6 January 2025

provisions, reduce tax burden in individuals and businesses while promoting the ease of doing business to facilitate.

Scholars over the years have stressed the moribund and non-efficacious nature of our present Tax system. It has been noted that the Nigerian tax system is confronted with many issues and challenges such as multiplicity of taxes, bad administration, non-availability of database, tax touting , complex nature of the Nigerian tax laws, minimum tax, commencement, change of accounting date and cessation, and non-payment of tax refunds.[68] Similarly, Ololade[69] emphasizing the unacceptable nature of our current tax system, noted that there is a gap in the knowledge of information technology required for effective tax administration in Nigeria. Digitization of the tax system was suggested as a way to efficiently administer Tax laws in Nigeria and optimize revenue. Prof. Umenewke[70] in the same vein noted that tax avoidance and evasion pose significant challenges to tax authorities, leading to loss of revenue and undermining the integrity of the Nigerian tax system. The need therefore to reform our tax laws to bring it in line with the realities of the times cannot be overemphasized.

The conflicting decisions of the Court in matters between the Federal Government and State government over who reserves the powers to impose and collect VAT reflects the dire need and necessity to reform and streamline our Tax laws for clarity which ultimately brings about productivity. The competence of State Government to impose consumption tax and the validity of the Value Added Tax[71] (VAT ACT) have been the subject of judicial decisions. In ***A.G Ogun State v Aberuagba,***[72] the Supreme Court held that State Government are only empowered to impose Sales Tax (a form of consumption tax) on intra- State transactions, without more. The implication

[68] Edori Daniel Simeon, EdoriIniviei Simeon, Idatoru Alapuberesika Roberts Issues and Challenges Inherent in the Nigerian Tax System. *American Journal of Management Science and Engineering*. Volume 2, No. 4, 2017. Pp. 52-57. Doi:10.11648/j.ajmse.20170204.11. Accessed 6 January 2025, https://www.sciencepublishinggroup.com> 'Issues and Challenges Inherent in the Nigerian Tax System'. Accessed 7 January, 2025

[69] https://journals.unizik.edu.ng "An Overview of the Imperatives and Challenges of Nigeria Tax System" Assessed on 21st April, 2025

[70] https://journals.ezenwaohaetoric.org : Tax Avoidance and Evasion in Nigeria: A critical Examination of the

[71] Cap VI LFN 2004 (as amended by the value Added Tax (Amendment)Act 2007, the Finance Act 2019 and the Finance Act 2020

[72] (1985) 1 NWLR (Pt 3) 395

of the Supreme Court's decision is that State governments cannot validly[73] impose Sales tax on inter-state or International transactions both of which are matters exclusively reserved to the Federal Government on the Exclusive Legislative list. The Supreme Court therefore struck down the Sales Tax law of Ogun State because it imposed Sales tax on international and inter- state trade and commerce.

In ***A.G of Lagos State v Eko Hotels***,[74] the Supreme Court considered whether a conflict exists between the provisions of the VAT Act and the Sales Tax Act of Lagos State. The 1st Respondent Eko Hotels Limited) was required under both legislations to collect tax at the rate of 5% on the price of the goods and services offered to its customer, and to further remit same to the relevant tax authorities. The 1st Respondent argument was that it was not proper and would be difficult to satisfy the provisions of both statutes, as it would amount to double taxation. It was noted by the Court that both VAT Act and Sales Tax Law of Lagos State provide for the collection of consumption Tax on same consumable items and that the rates upon which charges were made under both laws were similar. The court held that VAT Act has fully provided on consumption tax in Nigeria and therefore the Lagos Tax law was void. The court reasoned that applying both laws simultaneously would amount to double taxation, with the consumers bearing the burden of both statutes. It has been argued by Afolabi[75]that there is conflict in decision of the Supreme Court concerning the two cases reviewed. This is because the court did not take into cognisance the dichotomy of legislative powers between the Federal Government and the State Government as enshrined in the Constitution.

Powers to legislate on International and Inter-State trade and commerce including incidental or supplementary matters thereto vests in the Federal Government of Nigeria[76]. On the other hand, intra-state trade and commerce are residual matters which are within the legislative competence of the State Government.[77] The implication of the above position is that the powers to impose

[73] https://www.banwo-ighodalo.com> "Does the Federal Government have the Constitutional Powers to Legislate on VAT" Accessed 7 January 2025.
[74] (2017) LPELR- 43713 (SC)
[75] https://lelalegal.com "Tussle: A Review of Attorney General of Lagos State v Eko Hotels % Another" Assessed on 23rd April, 2025
[76] The 1999 CFRN (as amended) s 4(3) and paragraph 62 and 68 of Exclusive Legislative list
[77]

consumption tax is effectively shared between the Federal Government of Nigeria and State Government of Nigeria. The taxation powers of the Federal Government on consumption is limited to International and Inter-State trade and Commerce while the consumption taxation powers of the State Government are limited to intra-State trade and commerce. It therefore becomes imperative to evaluate the capacity of the proposed Nigeria Revenue Service to handle taxes in the concurrent legislative lists and avoid overlapping roles and ensure accurate reflection in the consolidated revenue fund in line with the constitution.

4.0 TAX REFORM ACT AND WORKABILITY OF THE SINGLE REVENUE COLLECTION AGENCY CONCEPT

Revenue collection in Nigeria at the federal level is carried out by government agencies such as the Customs service, Federal Inland Revenue Service and the Nigerian Upstream Petroleum Regulatory Commission.[78] There are other agencies that collect tax for both the state and the local government. Some types of taxes in Nigeria include personal income tax, Company income tax, value added tax, withholding tax, Petroleum profits tax, Education tax, Capital gains tax, Stamp duties[79]etc as we have shown earlier. The significant increase in the cost of revenue collection by the FIRS, NCS and NUPRC and all other tax collecting agents at the state and local government levels has sparked calls for a review of the Revenue collection mechanism from state finance commissioners[80]

During a stakeholder consultation with Public policy analysts and journalist in Abuja, the Presidential Fiscal and Tax Reforms Committee, led by T. Oyeldele recommended reducing the cost of revenue collection to one percent, aligning with global best practices where even high – revenue countries like South Africa spend less than one percent on Revenue collection.[81]

The huge collection cost of revenue incurred by the different revenue generation agencies has made it imperative for a single agency to undertake the task. This will ultimately cut cost of collection and provide the necessary efficiency needed to undertake the task.

[78] https://businessday.ng.'Nigeria to scrap roles of NUPRC. Customs, others in Tax collection'Assessed 7th January 2025

[79] https://reinvest.com 'Types of Taxes in Nigeria- Money Rise- Reinvest. Accessed 7 January 2025

[80] https://punching.com 'Three FG Agencies spend N533bn on Revenue Collection 'Accessed on 5 January

[81] Ibid

5.0 PROSPECTS AND PITFALL OF THE TAX REFORM BILL

The president of the senate, Senator Akpabio while speaking in Abuja at a roundtable discussion on the four tax reform bills organised by National Institute for Legislative and Democratic Studies (NILDS) reaffirmed the legislature's commitment to modernising Nigeria's tax system.[82] He described the bills as a critical step towards achieving the goal, noting that their passage into law would promote a fairer distribution of the tax burden among Nigerians. Akpabio emphasized that the proposed reforms are designed to enhance efficiency, boost revenue generation, and pave the way for a stronger and more prosperous Nigeria.

There is no doubt that it is in the national interest to pay attention to the proposed bills. It has implication for both local and foreign investors and indeed for the nation at large. The capacity of the bills to reposition the country for prosperity, growth and development cannot be over-emphasized. As we have shown, no country can thrive with obsolete and disorganised tax laws. It is hoped that the tax reform bills when passed into law will turnaround tax administration in Nigeria for the benefit of all.

The Tax reform Act has been lauded by some as having the potential to revolutionize our tax system. Some of the prospects of the bill are as follows:

9. The simplification and Harmonisation of the Nigerian Tax Law is a step in the right direction. This will go a long in ensuring a smoother administration of Federal taxes in Nigeria. The huge cost of generating the tax will be reduced as one agency now undertakes the task of ensuring compliance as opposed to three agencies with attendant huge cost of doing so.

10. The bill showed fairness and Equity by exempting low-income earners and small businesses. The Bill adjusted the personal Income Tax by providing for 0% Personal Income Tax for incomes under ₦800, 000. and progressive rates with a maximum of 25% for earnings above ₦50 Million. The bill also provided for Company Income Tax exemption for Small and Medium Enterprises with turn over below N50 million.

[82] https://nilds.gov.ng> 'Nass Committed to protecting Nigerian's Interests, says Akpabio' Assessed on 6th of January 2025

11. The bill also will enhance revenue efficiency. The Centralization of tax administration minimizes leakages and enhances transparency. The bill seeks to ensure equity among States. The model of distributing rewards their actual economic contributions, replacing the current system that benefits states hosting corporate headquarters where VAT remittances are typically made.

12. The bill will bring about Tax accountability and Transparency. The establishment of the Tax Ombudsman taxpayers are protected as they can grievances will be looked into. This ultimately ensures equity and fairness in tax administration. The bill aligns with Global best practises. Progressive tax rates and robust enforcement mechanisms reflect international best practises.

PITFALLS OF TAX REFORM BILL 2024

Though the bill is praiseworthy, it has its drawback. It has been described as reform without relief.[83] Some of the draw backs of the bill are:

(6) High level of Poverty in the land is a major pitfall for the bill. There is significant economic hardship, high inflation rate, rising cost of fuel and electricity process, the cost of living is way too high. Introducing higher rates, especially through VAT and corporate taxes, puts pressure on businesses and households and could ultimately lead to rejection of the reforms and worsen poverty if the proceeds of the new reform is channelled towards creating jobs through support for the manufacturing industry.

(7) Much as the bill provided for Company Income Tax exemption for Small and Medium Enterprises with turn over below N50 million, the introduction of development levies and higher VAT rates could work hardship on SME's whose margin of income is usually low. This ultimately could retard the growth of the SME's or wipe them off.

(8) The importance of telecommunication companies in digital inclusion and economic transformation of the Country cannot be over-emphasized. The imposition of Excise tax on gaming and telecommunications could stifle growth in these sectors,

[83] Dataphyte.com.' Editorial: Reforms without Relief: the Burdens of the 2024 Tax Reform Bills and why it is a Hard sell 'Assessed on 6th of January 2025.

6.0 CONCLUSION

The Tax reform bill has the potential to transform the Nigeria tax system positively and place it at par with world best practices. The consolidation of Tax laws of Nigeria into a single document, the centralization of administration and other fair provisions are germane to national growth and development. There are however challenges with the bill as we have shown but they are not insurmountable.

7.0 RECOMMENDATIONS

This paper recommends extensive capacity building for the stakeholders so as to achieve the lofty aim of the bill. The staff of the Nigeria Revenue Service should be carefully selected and properly trained for smooth transition from FIRS operations.

There should also be a thorough and holistic public awareness campaign on the need and necessity of the bill to the Nation. This will clear a lot of doubts among both the literate and the illiterate. The average Nigerian will only buy into a project that he is sure of the benefits in the long run. This will ultimately reduce tax evasion and ensure compliance.

Nigeria should invest massively in technology to achieve the aim of the bill. The tax bill framework cannot work without technology. A robust software that will take into consideration the overlapping nature of some our tax matters especially those in concurrent list will serve the country best. Transparency and accountability in the system will definitely clear misconceptions about the bill.

The bill proposed increase in VAT rate from the current 7.5% to 10%, and ultimately to 15% by 2030. This will lead to higher inflation and an increase in the prices of goods. This ultimately will further impoverish the poor and render the economy comatose. A review of this provision is recommended.

The Tax Adminisration Bill proses that where a company awards a contract to an unregistered person, such a company shall be liable to pay an administrative penalty of ₦5,000,000. This amount is rather too high and may deplete the financial capacity of such a company. Though the

offence is such as to cause loss of revenue to the government, the penalty is too high and could defeat the purpose of the Act.

RIGHT TO EDUCATION OF THE GIRL CHILD AND PRACTICE OF CHILD MARRIAGE IN NORTHERN NIGERIA: CHALLENGES AND WAY FORWARD

Abubakar Mohammed Bokani*

Abstract

Child marriage is a perennial problem that is common and peculiar in Northern Nigeria with attendant increase in number of out of school girls. Efforts are made to contain the trend of child marriage as can be gleaned from the enactment of Child's Right Act which prohibits child marriage. However, Child Right Laws in most states of the North seem to permit child marriage where the child has attained puberty. Out of several options that are been considered as possible solutions to the problem of child marriage, the strategy that seems to have agitated the international community, government and other stakeholders is free and compulsory education of the girl child. This paper adopted doctrinal method of research to examine the practice of Child marriage and how compulsory education impacts practice of child marriage in the North. Thus, the research question was, what is the best way forward for addressing the prevailing culture of marriage with children in Northern Nigeria? This paper has found that some legislation and customs seem to permit child marriage and betrothal despite the acclaimed right of the girl child to free, and compulsory education, and the International legal instruments which do not permit child marriage. More so, the problem of marriage with a child requires a multi- faceted approach rather than the compulsory education approach which seems restrictive. Thus, it has been recommended that the Child Right Laws of the Northern states should be amended to clearly prohibit child marriage in the North, and proscribe customary practices that promote marriage with a child.

***Keywords**:* Right, Compulsory Education, Child Marriage, Girl Child, Human Right.

1.1 INTRODUCTION

Child marriage is a perennial problem that is common in Nigeria, particularly in the North with certain socio-economic consequences such as increase in the number of out of school girls. Efforts are made towards checking the trend of child marriage in the North as can be gleaned from the enactment of legislation prohibiting child marriage such as the Child's Right Act[1]. Out of several options that are been considered as possible solutions to the problem of child marriage, the strategy that seems to have agitated the international community, government and civil society organizations is the option of free and compulsory education of the girl child. Education is crucial

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[1] The Child Right Act, 2003 was promulgated on 31th July, 2003 as Act No.26 after it was assented to by President Olusegun Obasanjo. The Act shall herein after be called 'CRA'.

because it empowers the girl and enables her to take informed decision about marriage.[2] By educating the girl child, it is believed that she will be retained in school and her education will not be interrupted due to early marriage. However, certain socio-economic and legal challenges in Nigeria make it impossible to address child marriage in the North through compulsory education. This research argues that certain customs of the communities and legislation in the North still permit child marriage and betrothal despite the right to free, and compulsory education.

It is instructive to note that the multi-structural nature of Nigeria's legal system enables different laws such as customary law, Islamic law and legislation to operate with attendant incident of conflict of laws. This situation entails irreconcilable conflicts among these laws although the Constitution has clearly defined their areas of application, especially customary law and Islamic law. The research question posed by this paper is, what is the strategy to be adopted to address the prevailing culture of marriage with children in Northern Nigeria? This paper examines the interplay between the right to education and the culture of marriage with children in the context of the multi-dimensional pattern of Nigerian legal system.

The significance of the paper lies in the fact that this paper addresses the vexed problem of the culture of marriage involving children by examining the different applicable to marriage with a child. More so, this paper underscores the point that unless the conflicts in customary law, Islamic law and legislation governing child marriage are resolved, child marriage will persist in the North despite various legislation, policies and interventions by government, agencies and non-governmental organization. To this end, this paper relied on doctrinal research method to examine the interplay between the right to access education and child marriage. The objective of the paper is to establish that although promoting the girl child's access education can be an effective strategy to drastically reduce incidences of child marriage, education may not a silver bullet. Therefore, it is imperative to interrogate the laws enacted to protect the child and prohibit marriage with the child in the Northern Nigeria and discover whether the laws actually promote the practice.

[2] Olayinka Ademidun Adediran, *Abolition of Child Marriage Practice in Nigeria: A Case Study of Girl Bride in the Northern Part of Nigeria,* (Maimo University, 2021) 22. Retrieved from: https://www.diva-portal.org/smash/get/diva2:1562366/FULLTEXT02.pdf. Accessed on 19/4/25 at 11:40am.

1.2 **LEGAL FRAMEWORK GOVERNING THE RIGHT TO EDUCATION IN NIGERIA**

Access to education is a right which has received recognition and protection under numerous international and local human rights instruments. Prior to the development of human rights in International law, human rights were considered as matters within the domestic jurisdiction of sovereign states. However, after 1945, focus was directed at human rights due to the grave breaches that were perpetrated during the wars. As such, in 1945, the international community adopted the United Nations Charter in 1945 with the purpose of promoting human rights, and this was subsequently followed by the Universal Declaration of Human Rights and series of international human rights instruments.[3] At the level of international law, education is guaranteed by international human rights instruments such as Universal Declaration of Human Rights[4], International Covenants on Civil and Political Rights (ICCPR), International Covenants on Economic, Social and Cultural Rights[5], and the Convention on the Rights of the Child[6]. These instruments collectively entrenched the right to education internationally and thus place equal obligation on the states to protect and promote the right to education. For instance, as regards right to education, it is provided as follows:[7]

1. Everyone has the right to education. Education shall be free, at least in the elementary level and shall be compulsory and accessible.
2. Education shall be aimed at full development of an individual and to strengthen the respect for human rights. It must promote understanding, tolerance and friendliness among countries and shall promote and maintain world peace and security.
3. Parents have right to choose the type of education that is to be accessible by their children.

This right is important because it provides the individual with tools for his socio-economic development. It covers civil and political rights, as well as economic, social, and cultural rights,

[3] David Harris, *Cases and Materials on International Law* (7th Edition, Sweet & Maxwell, 2010)535.
[4] It was adopted on 10th December, 1948 by UN General Assembly. It shall hereinafter be referred to as 'UDHR'.
[5] Both Covenants were adopted by the UN General Assembly on 16th December, 1966.
[6] It was adopted on November, 1989. It is herein after referred to as 'CRC'.
[7] Universal Declaration of Human Rights, 1948, Article 12.

and also promotes the notions of understanding, tolerance, peace and harmonious relationship among individuals of different racial and religious inclination.[8]

The philosophy of the right to free and compulsory education for all, especially the girl child has been succinctly provided in the UDHR.[9] Similarly, the CRC also provides for protection of the right to education by affirming the right of every child to free and compulsory education.[10] At the regional level, the African Charter on Human and Peoples' Right[11] also states that very individual shall have a right to education. More so, the African Charter on the Rights and Welfare of the Child[12] provides for right to education. These instruments have been ratified by Nigeria and therefore Nigeria has a duty to implement the provisions of the human rights instruments. However, ratification of the international treaties on right to education does not automatically make such treaties enforceable in Nigeria.[13] Therefore, the Nigerian Constitution requires that a treaty has to be enacted into law before it becomes enforceable in Nigeria.[14]

At the national level, Nigerian Constitution recognizes the compulsory education although this is not included as a part of Chapter Four of the Constitution. The right to education is seen in the responsibility imposed on government to ensure that there are equal and adequate educational opportunities at all levels. This responsibility also imposes duty on government to strive to eradicate poverty and provide free education at all levels.[15] Conscious of these responsibilities, the government introduced the Universal Basic Education (UBEC) programme and also enacted the Child Right Laws. Kaduna State was the first state in the Northern Nigeria to domestic the CRA by enacting the Child Welfare and Protection law in 2018.[16] Therefore, the Constitution, Universal Basic Education Act and CRA constitute the legal framework for the implementation of compulsory education in Nigeria. The principles of equality of opportunity in education and freedom from discrimination underpin the right to compulsory education.[17] These principles have

[8] Javaid Rehman, *International Human Rights Law*, (2nd Edition, Pearson Education Limited, 2010)160.
[9] UDHR, 1948, Article 26
[10] CRC, Articles 28, 29, 30, and 31.
[11] This was adopted by Nigeria on 22nd June, 1983. It was ratified by an Act No. 2 of 1983
[12] Adopted on July, 1990 but ratified on July, 2001.
[13] Katarina Tomsevski, Free and Compulsory Education for All Children: Gap Between Promise and Performance, Raoul Wallenberg Institute, 2001)16
[14] CFRN, 1999, s 12
[15] CFRN,1999 s 18(3)(a)-(d)
[16] https://dailytrust.com/kaduna-assembly-passes-child-protection-law/#google_vignette. Accessed on 4/06/2024 at 2:15pm
[17] Elijah Adewale Taiwo, 'Equal Access to Education and Freedom from Discrimination in Educational

been adopted in the UNESCO Convention against Discrimination in Education with a two-throng objective: elimination of discrimination in education and promotion of equality of opportunity and treatment.[18]

However, the nature and extent of the relationship between international human rights instruments and local legislation remain controversial. There are few theories which seek to explain the interplay between international law and Nigerian domestic laws. The dualist theory opines that international law and domestic law are quite different from each other in terms of nature, character and sphere of application.[19] That notwithstanding, in the event of conflict between the two systems, national law will take precedence over international law. Thus, international law can only be applied in a foreign country if it has been incorporated or transformed in the municipal law and it satisfies the conditions prescribed by municipal law for its validity and operation.[20] However, the Monist theory provides an alternative approach to the relationship between international human rights instrument and domestic laws. This theory views international and municipal laws as interconnected and therefore constitute a whole legal structure.[21] As such, English courts take judicial notice of international law because rules of international law or treaties are considered as rules of law which need not be proved before the court.[22] According to the Monist theory, international law is superior even within the sphere of domestic laws.[23]

Notwithstanding the foregoing, the theories of dualism and monism can be criticized on the basis that they presuppose that there is a common place or ground where both international law and municipal law interact. In view of the criticism against dualism and monism, third theory formulated by Fitzmaurice and Rousseau deny the existence of a common ground on which international law and municipal law apply and argue that the superiority of one system over the other does not arise.[24] According to the theory, international law and municipal law are two distinct

Opportunity: An Analysis of the Constitution and International Obligations in Nigeria' [2011] (1)(1) *University of Ibadan Law Journal*, 288.

[18] Ibid,289.

[19] Osita Nnamani Ogbu, Human Rights Law and Practice in Nigeria,(Snaap Press Limited, 2013)106.

[20] E.N. Mgbemena, Moniest and Dualists and the Applicable Laws in International Commercial Arbitration, [2916](4)(1) Madonna University Faculty of Law Journal, 72.

[21] J.G. Starke, *An Introduction to International Law*, (Eight Edition, Butterworths, 1977) 84

[22] Ian Brownlie, *Principles of International Law*, (Third Edition, Clarendon Press, 1979) 44

[23] Chris Nwachukwu Okeke,*The Theory and Practice of International Law in Nigeria*(Fourth Dimension Publishers, 1986)3.

[24] Malcolm N. Shaw, *International Law*, (Seventh Edition, Cambridge University Press, 2014) 94.

legal systems operating within their respective fields.[25] In the Nigerian context, the dualist theory has been adopted in Nigeria to govern the application of international treaties in Nigeria since the Constitution provides that a treaty shall not apply in Nigeria unless it is enacted into law. [26]In any case, the legal effect of such relationship between international law and municipal law is rarely significant because the principles of international human rights on right to education, especially free and compulsory education have been incorporated into the domestic legal regime. Nonetheless, since these international human rights instruments do not apply automatically in Nigeria, it is necessary to domesticate them to make them enforceable in Nigeria.

1.3 **THE CONCEPT OF CHILD MARRIAGE IN NIGERIA**

Marriage is an institution that is significant in every society due to its socio-economic values. As such, some international instruments provide that persons of marriageable age are entitled to marry and establish a family according to their national laws.[27] Danladi opined that this right is distinct from other rights because it does not have limitations at all. He however conceded that some limitations may be found in some national laws governing exercise of the right such as the laws that prohibit Incest and Polygamy in some jurisdictions.[28] Similarly, the UDHR also recognizes the right to marry, and found a family.[29] It can be gathered from the *travaux preparatoires*[30] of the UDHR that Article 16 requires marriages to be entered into voluntarily and that the partners to the marriage should be treated on the basis of equality.[31] This concern was considered in the drafting of subsequent international instruments. Unfortunately, Article 12 of the European Convention has been described as retrogressive as it did not reflect the provision of Article 16 of the UDHR.[32] The

[25] Ibid.
[26] CFRN 1999, s 12
[27] European Convention on Human Rights and Fundamental Freedoms, Article 12
[28] Kabir Mohammed Danladi, *Introduction to International Human Rights Law and Practice* (Ahmadu Bello University Press Ltd, 2016) 113.
[29] Article 16 of Universal Declaration of Human Right, 1948, Article 16
[30] Documents and materials produced during negotiation, drafting and discussion of a treaty such as minutes of Meetings, draft of the treaty texts, reports and other documents prepared during the treaty making process.
[31] Theodor Meron, *Human Rights in International Law: Legal and Policy Issues*, (Clarendon Press, Oxford, 1984) 155.
[32] Ibid, 55.

American Convention meanwhile, guarantees all rights found in the UDHR and also requires that equal rights shall be accorded to children born out of wedlock and those born in wedlock.[33]
Similarly, Nigerian Constitution has guaranteed the right to found a family through marriage in line with the customs of the people. The question to be answered here is, does the girl child also enjoy freedom to marry and found a family as guaranteed by international instruments and the Constitution? The response to this question depends on the minimum age of marriage stipulated by law. It is important to note that marriage is contractual in nature, and like other contracts, the capacity of a child to enter into contract of marriage is governed by the rules of law of contract. At common law, an infant can enforce a contract to which he is a party but the infant cannot be sued on the contract during his infancy.[34]
Under customary law, infancy or adolescence is a concept of universal acceptance in all African societies, including the communities of the North where Islam is the predominant religion. The age of majority varies from one community to another, and the customs prescribe the attainment of puberty as age of majority and basis for membership of the community. Thus, in such communities, unless a child has performed puberty rites, he or she is not legally entitled to get married.[35] Puberty is usually attained at the ages of 14 and 16 for girls, and 16 and 18 for boys.[36]Thus, most customary laws in Nigeria do not prescribe any specific age of solemnization of customary law-marriage. Consequently, the capacity of the parties to contract a customary marriage depends on two factors. One is the attainment of the marriageable age, and the second is exclusion from the prohibited degrees as recognized by the community.[37] In contrast, Kolaja identified four essential requirements for validity of customary marriage: consent of the bride and her parents or guardian, capacity to marry, payment of bride price, and formal giving away of bride.[38] At customary law, a person lacks legal capacity to marry either because he is under age or because there is a 'Christian marriage' subsisting between him and a third party.[39] According to

[33] American Convention on Human Rights, Article 17
[34] E.I. Nwagugu, *Family Law in Nigeria*, (Heinemann Educational Books Plc, 1974) 2.
[35] T. olawale Elias, *The Nature of African Customary Law* (Third Impression, Manchester University Press, 1972) 103
[36] Ibid.
[37] Akintunde Emiola, African Customary Law, (3rd Edition, Emiola Publishers Ltd, 2011) 128-129.
[38] A.A. Kolajo, Customary Law in Nigeria through the Cases, (Spectrum Books Ltd, 2005) 235.
[39] Ibid

Nwagugu, absence of a specific age for marriage in the customary law has encouraged the practice of child marriage.[40]

Furthermore, the laws governing marriage in Nigeria do not seem to specify any age minimum threshold for marriage. Rather, they merely state that unless the party is a widow or widower, there is need to obtain the written consent of either the parents or guardian, where such party is below the age of 21 years.[41] The implication is that a child can get married subject to consent of her parent or guardian while a person who is 21 years or above is not required to obtain consent of the parent or guardian. Unfortunately, the laws seem to allow encourage child marriage since statutory marriage with a child will be valid if the consent of the parent was obtained in writing. [42] In consequence, the laws governing marriage tend to undermine the objectives of the CRA, Child Rights Laws and restrict access to compulsory education.

CRA which domesticated the international instrument on the rights of the Child defines a child as a person below 18 years.[43] The pertinent question therefore is, what is the age at which a person can enter into contract of marriage in Nigeria? This question is important because it determines whether a particular marriage is a child marriage or not. Before the CRA, it was believed that the age at which a person can lawfully contract marriage was 16 which was the age applicable under the English law. Although it has been canvassed that Nigeria should revert to the Common law age of 14 years for boys and 12 for girls, this has been dismissed retrogressive.[44] Nevertheless, countries have obligations to take legislative action to specify the minimum age for marriage. Accordingly, no marriage shall be legally entered into by any person under the prescribed age except, where a competent authority has granted an exemption for serious reasons which will protect the interest of the party to the marriage who is below 18 years.[45]

Child marriage in Northern Nigeria has been lingering on for a long time and the girl child has been suffering as she is deprived of her right to access education and other opportunities to realize

[40] Nwagugu (n, 34) 43.
[41] Margaret C. Onokah, *Family Law* (Spectrum Books Ltd, Ibadan,2003) 13.
[42] Ibid, 124.
[43] Ifeoluwa A. Olubiyi and Aghohovwia Kwame-Okpu, 'An Assessment of the Protection of Children under the Nigerian data Protection Regulation 2019' [2021](9)(1), *ABUAD Law Journal*, 8.
[44] Itse Sagay, *Nigerian Family Law, Principles, Cases, Statutes & Commentaries* (Malthouse Press Ltd, Ikeja, 1999) 52.
[45] Article 2 of the Convention on Consent to Marriage, Minimum age for Marriage and Registration of Marriages Opened for Signature and Ratification by General Assembly resolution 1763 A(XVII) of 7th November,1962 which into force 9th December, 1964.

her full potentials. Although the government is making effort to end child marriage in Nigeria, the practice is still common and widely practiced in the North. It has been argued that religious practice tends to encourage early marriage and parents indulge in it as a way of preventing pregnancy outside wedlock.[46] Reasons adduced for early marriage is that it preserves the value of virginity, reduces fear about marital sexual activity and promiscuity.[47] However, child marriage can be criticized for making young girls become mothers before adolescence. It exposes children to risk of Vesico Vagina Fistula (VVF) which renders the girl prone to diseases.[48] Wallace considers early marriage as an obstacle to the education of girl child, as well as the cultural beliefs that favour the education of the boys and deem girls as destined to the roles of wife and mother.[49]

Wallace proposed strategies to combat difficulties which hinder access to education through sensitization and mobilization of public opinion, especially of parents and giving the girl bride opportunity to continue their education.[50] However, the basis of inequality between boys and girls which affects their legal status is seen in the unequal opportunity for education in the traditional African society. This pattern of education dictated the roles that boys and girls are supposed to play in the society with the girls conditioned to accept the role of women primarily as wives and mothers.[51] That notwithstanding, it is necessary to reiterate that Nigeria is a patriarchal society that records high rate of teenage pregnancy and early marriage, especially in the North. To ensure that the girl child has access to education, the law makes provision for a pregnant girl child to be given the opportunity to complete her education after delivery. This will help a great deal to support the girl child and guarantee her right to education.[52] It is posited that the same opportunity may be extended to victims of child marriage by ensuring that their right to education is not defeated by reason of the pre-mature marriage. There seems not to be convincing reason for discrimination between girls who got pregnant and girl child who is married off causing interruption of their

[46] Oguntokun Oluwanike Olufunke, 'Culture and Religion as Impediments to the Elimination of Violence against Women and the Girl Child in Nigeria', [2017]1 *Baze University Abuja Law Journal*, 248

[47] Ibid, 249

[48] Ibid,249

[49] Rebecca Wallace, *International Human Rights: Texts and Materials* (Sweet & Maxwell, London) 243.

[50] Ibid, 244.

[51] B. Aisha Lemu, Muslim Women and Marriage under the Shariah Rights and Problems Faced. In: Bola Ajibola, et al (eds) Women and Children under the Nigerian Law, (6) Federal Ministry of Justice, 97.

[52] Elisabeta Smaranda Olarinde, 'Reflections on the Basic Rights of the Nigerian Child under the Child Rights Act, 2003', [2005] (4) *University of Ibadan Journal of Private and Business Law*, 97.

education. Education of the girl child will increase the number of educated mothers, and this will in turn impact positively on the larger population.[53]

However, the Child Right Laws of some states in the North do not seem to expressly address the problem of Child marriage. On the contrary, it can in fact be argued that the laws tend to provide leeway for marriage with a child to be concluded in the states. For example, the Niger State Child's Right Law prohibits both marriage and betrothal with a child. In fact, the law makes it an offence punishable with a term of imprisonment not less than 6 months or a fine of N500,000.[54] The law does not clearly provide for exception to the prohibition of child marriage on the basis of faith or personal law of the child. However, where there is conflict involving questions of Islamic law and any of the provisions of the law, Islamic personal law shall prevail.[55] Therefore, it seems an exception is created in Islamic personal law where a party to a child marriage is a Muslim.

The Kano State Child Protection Law has clearly prohibited marriage with girl by providing that the girl is not capable of contracting a valid marriage and such marriage is null unless the girl's culture permits.[56] This provision of the law which permits marriage with the child on the basis of culture can be criticized on three grounds. First, although the law defines a 'child' as a person who is to attain the age of 18 years,[57] it defines 'child' for purpose of child marriage as a person below the age of puberty.[58] Unfortunately, the word 'puberty' is not defined in the law even as it is incapable of precise definition because puberty is relative. Thus, definitions of the 'child' used in the law seem contradictory and ambiguous and thus undermine the essence of the prohibition of marriage with a child. Secondly, the law seems to adopt double standards in the definition of a child; age and puberty. This tends to create uncertainty in the law and provides a leeway for the practice of child marriage to be justified under the law. The essence of the CRC, CRA, and Child Rights Law are to make the age, and not puberty, of the child the criterion for determining age of majority. Thirdly, the prohibition is subject to an exception that marriage with a child is permitted under the law where the custom permits. The necessary implication is that customs that promote child marriage will continue to be observed despite the prohibition in the law.

[53] Ibid, 97-98.
[54] Niger State Child's Right Law, 2021, s 16(1)(2)(3)
[55] Ibid, s 33.
[56] Kano State Child Protection Law, 2023, s 16(2)
[57] Kano State Child Protection Law, 2023, s 2
[58] Ibid, s 16(2)

In contrast, other Child Right Laws such as Zamfara Child Protection Law does not have similar provision which prohibit marriage with a child in Zamfara state. Yet, there is a provision in the law that where there is a conflict between the Child Protection Law and the Personal Law of the Child, the personal law shall prevail.[59] Thus, where the personal law of the child permits marriage to a child, there will be no issue of inconsistency of the provisions because the Child Protection law has not only unilaterally conceded and but also subjected its provisions to the personal law of the Child. Unfortunately, the definition of 'personal law' in the law is ambiguous as personal law is defined as 'the faith of a child'.[60] The faith of the child in this context is the religion which the child professes and her right to profess any religion is protected in the Constitution and the CRA.[61] The question therefore is, why does the law subject the prohibition on marriage with the child to the 'faith of the child'? it can be argued that there is no justification for this exception on the basis of the faith of the child since the child may not be experienced enough to take such a crucial decision as to her faith without the guidance of her parents. It seems absurd that the child with whom marriage is prohibited can choose her faith by reference to which legality of her marriage is to be determined. In a nutshell, the legality of the marriage with the child is to be determined by the child's religion and not the Child protection Law which is enacted to protect the child. In any case, Freedom of religion forbids the imposition on a person attending educational institution of a requirement to receive religious instructions or to participate in religious exercises of a denomination which is not his own or approved by his parent or guardian.[62] The religious and community leaders are therefore, urged to encourage respect for the child's freedom of religion and eliminate cultural practices that obstruct the enjoyment of the right.[63] At the final analysis, it seems therefore that marriage with the child is not out rightly prohibited in the law in Zamfara State Child Protection law though it is prohibited in the Child Right Act.

The Nigerian legal system is pluralistic because it evolved from multiple sources that reflect the legal history and socio- cultural diversity in Nigeria. Islamic law is recognized as a source of law

[59] Zamfara Child protection Law 2022, s 169.
[60] Zamfara Child Protection Law, 2022, s 2.
[61] CFRN, 1999, s 38; CRA, s 7(1)
[62] Ayo Ajomo, *New Dimensions in Nigerian Law*, (Nigerian Institute of Advanced Legal Studies, 1989) 105-106.
[63] Nasiru, A.S, 'The Right of the Child and Religious Freedom in Nigeria', 14. Retrieved from: https://www.scribd.com/document/322440597/The-Right-of-the-Child-and-Religious-Freedom-in-Nigeria. Accessed 18/04/25 at 10:03pm

even though its scope is limited to Islamic personal law.[64] Although CRA prohibits marriage with a child and betrothal, Islamic law does not stipulate age limit for marriage and thus marriage with a girl is permissible under Islamic law.[65] According to Ekundayo, the Islamic position is considered as an impediment to education of the girl child in the Northern Nigeria.[66]However, there are arguments on the implementation of the CRA across Nigeria, especially in Northern states that are yet to enact the Child Rights law. The Nigerian Constitution vests the power to make laws relating to the rights of the child in the legislature having categorized it under the Residual Legislative List. Thus, states are entitled to adopt the Child Rights Act or refuse to adopt it. As such, the CRA cannot be enforced in the states that have not yet enacted the Child Rights Law.[67] However, while the Child Rights laws stipulate 18 years as minimum age of marriage, Islamic law allows marriage of a child below 18 years. In the North, precedence is accorded to Islamic law because the most communities are predominantly Muslims. Therefore, a girl child can be married off in accordance with Islamic law. Kaduna State Child Welfare and Protection Law regards Islamic law as supreme and permits marriage with a girl who is 14 years or above. Similarly, Katsina State Child Protection Law considers Islamic law as supreme over the provisions of the Child Protection Law where the child is a Muslim.[68] Adeyemi et al have lamented that due to exception of custom and Islamic law, it will not possible to eradicate marriage with a child, especially in the North.[69]

Kayode posited that Islamic position on marriage with a child seems to offend the validity test prescribed for customary law. Thus, where the validity of the marriage is to be tested in a superior court, it will fail the test of validity.[70] However, it has been argued that child marriage is not

[64] Abdulraheem Taofeeq Abolaji, 'Child Rights and protection in Nigeria: Exploring Nexus of Shariah, Common and Customary Law Provisions', [2016] (2)(2)*Lead University Law Journal,* 210.

[65] Dije Mohammed, 'A Comparative Analysis of the Child's Right Act and the Islamic Legal Regime in Nigeria' [2015] (8) *Journal of Private and Comparative Law,* 108.

[66] Ekundayo, Osifunke Sekinah *The Legal Protection of Children's Right to Free and Compulsory Primary Education in Nigeria: problems and prospects* (PhD Thesis, SOAS University of London, 2015) 163. Retrieved from: https://www.academia.edu/64019643/The_legal_protection_of_children_s_right_to_free_and_compulsory_primary_education_in_Nigeria_problems_and_prospects. Accessed on 1/06/2024 at 8:45pm.

[67] Ibid, 163.

[68] Child Protection Law of Katsina State, 2020, s 3

[69] Adeyemi Nurat Keyinde, et al, 'Causes and Challenges of Girl- Child Marriage in North West Nigeria', [2023](21)(1)*African Anthropologist*, 33-34.

[70] Kayode Olatunbosun Fayokun, 'Legality of Child Marriage in Nigeria and Inhibitions against Education Rights', [2015] (5)(7)*US- China Education Review,* 166.

prohibited in Nigeria because the Constitution has recognized Islamic and customary marriages.[71] Islamic and customary marriages have been categorized under residual list which is within the legislative competence of the states. As such, it will not be constitutional to determine the legality of child marriage on the basis of the law made by National Assembly since that is not within its legislative competence. Therefore, in resolving the issue of child marriage, it must be noted that the issue is delicately linked to the pluralistic nature of the Nigerian legal system which recognize customary and Islamic law as sources of law. Therefore, it seems the issue cannot be effectively resolved by reference to Child Rights Act independent or in isolation of Islamic and customary laws recognized in the Nigerian Constitution. In conclusion, although CRA protect the rights of the child by prohibiting marriage with a child, it seems to infringe the child's right to practise any religion.[72] This is perhaps the justification for subjecting the provisions of the Child's right law prohibiting child marriage to the faith or personal law of the child.

1.4 **ENFORCEMENT OF RIGHT TO COMPULSORY EDUCATION**

Enforcement of the international human instruments on right to education are essential to realizing access to education. Unfortunately, the UN lacks the mechanism to compel compliance with these obligations by states.[73] Therefore, local legislation is crucial for enforcement of the right to education. Yet, legislation alone is not enough to support effective implementation of the right. Litigation is one important mechanism for enforcement of the right to education and the judiciary plays a central and critical role in this regard.[74] However, the Courts have been inundated with enormous challenges such as corruption, poor remuneration, inadequate funding, and abuse of court orders by the government agencies which affect the effective delivery of justice and by necessary implication enforcement of right to education.[75] More so, another challenge to enforcement of right to education is the rigid distinction made by the Constitution between civil and political rights and economic, social and cultural rights. While the former have been

[71] Eyinna S Nwauche, 'Child Marriage in Nigeria: (Il)legal and (Un) constitutional?' [2015] 15 *African Human Rights Law Journal*, 427.
[72] Tim S Braimah, Child Marriage in Northern Nigeria: Section 61 of Part 1 of the 1999 Constitution and the Protection of children against Child Marriage, African Human Rights Law Journal, (2014)14, pp.481-482.
[73] Akin Oyebode, International Law and Politics: An African Perspective, Bolabay Publications, Ikeja,2003,p.203.
[74] Emmanuel Olugbenga Akingbehin, The Justiciability of Right to Free Basic Education Conundrum in Nigeria, South Africa and India: From Obstacle to Miracle, AUDJ, Vol.17, No.1, 2021,p.75.
[75] M.T. Ladan, *Materials and Cases on Public International Law* (Ahmadu Bello University Press Ltd, Zaria) 194.

recognized in Chapter 4 of the Constitution, the latter have been captured in Chapter 2 under 'Fundamental Objectives and Directive Principles of State Policy'.[76] Thus, it seems there is absence of a forum under the Constitution for the enforcement of the right to access education in Nigeria. It has been argued that the right to education ought to be enforceable in Nigeria because Nigeria has ratified the ICESCR and therefore Nigeria is bound by its obligation despite the limitations placed by its local legislation and conditions.[77]

Fortunately, a window for the judicial enforceability of the right to education as part of the fundamental state policy is seen in the provisions of the African Charter on Human and Peoples' Rights which is applicable in Nigeria as African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[78] In ***Abacha v. Fawehinmi*,**[79] the Supreme Court reiterated that the Charter has become part of the domestic laws and is enforceable in Nigerian Courts. It is worthy to note that the provisions of the Charter have been incorporated and implemented in successive government policies and programmes including Universal Basic Education Act as well as Universal Basic Education Programme aimed at re-enforcing free compulsory basic education.[80] Nevertheless, the question of enforceability of the right to compulsory education was raised before the ECOWAS Community Court of Justice. In the case of ***Registered Trustees of Socio-Economic Rights and Accountability Project v. Federal Republic of Nigeria and Universal Basic Education Commission*,**[81] the plaintiff filed an application before the ECOWAS Community Court of Justice against the defendants alleging infringement of the right to quality education. The Defendants challenged the jurisdiction of the court contending that the right to education is not justiciable. The 2nd Defendant contended that although the Constitution has imposed a duty on the government to provide free compulsory education, such directive is non-justiciable. In its ruling delivered on 27/10/2009, the Court decided that the right to education recognized in Article 17 of the AFCHPR is independent of the constitutional provision. The Court further found that it is empowered to apply the provisions of the Charter more so that the right to education is justiciable before the

[76] Ibid.
[77] Ibid. p.195.
[78] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap.A9, Laws of the Federation of Nigeria, 2004.
[79] [2001] 51 WRN 29
[80] Olasupo Shashore, "Public Interest Litigation- Enforcing Social and Economic Rights" [2012]30, The Advocate, 105
[81] Suit No: ECW/CCJ/APP/08/08

Court.[82] This decision seems to have provided the necessary impetus to Nigerian courts when faced with matters of socio-economic rights. In ***Legal Defence and Assistance project (LEDAP) Ltd/Gte v. Federal Ministry of Education & Anor***,[83] the applicant commenced a suit at the Federal High Court, Abuja praying for a declaration that the right to free compulsory education is enforceable having regard to the UBE Act, 2004. The learned judge held that with the enactment of the UBE Act, the right to free compulsory education is now justiciable. With these judicial authorities, it is beyond doubt that the right to education of the girl child is justiceable and enforceable. This has impact on the practice of child marriage because the girl child cannot be denied right to education and forced into early marriage. Although right to education will not completely address the problem of marriage with a child, it is a strategy to combat child marriage.

The Child Rights laws contain provisions for the right to compulsory education and also mechanism for enforcement of this right. For instance, Zamfara Child Protection Law affirms that every child has right to free, compulsory and Universal Basic education and religious education.[84]Under the law, the Family Court is created to hear matters relating to the child.[85]The court also has jurisdiction to hear any civil proceedings in which the existence or extent of a legal right, power, duty, liability in respect of a child is in issue.[86] These provisions appear to have given the family court exclusive jurisdiction to hear child rights matters, including right to compulsory education. It may be contended that this provisions seems to contradict the provisions of the constitution which confers jurisdiction on the FHC and the SHC to hear matters of fundamental rights enforcement.[87] In the light of the foregoing, the provisions of sections 42 and 44 of the Zamfara State Child Protection Law seem to be void due to inconsistency with the Constitution.[88] In contrast, the Niger State Child's Right Law created a family court for the purpose of hearing and determining matters relating to children.[89] The law created two levels of court; Magistrate and Sharia Courts with original jurisdiction while the High Court has appellate jurisdiction.[90] Although

[82] The ruling was delivered on 27/10/2009
[83] (Unreported) Suit No: FHC/ABJ/CS/978/15
[84] Zamfara Child Protection Law, 2022, s 8(1); Niger State Child's Right Law, 2021, s 9(1)(2)
[85] Zamfara Child Protection Law, 2022, s 42.
[86] Ibid, s 44(1)(a)
[87] CFRN,1999, s 46
[88] CFRN,1999, s 1(3)
[89] Niger State Child's Right Law, 2021, s 50(1).
[90] Ibid, s 50(2)(a-b)

the law confers jurisdiction on the Magistrate and Sharia Courts to try offences under the law,[91] the civil jurisdiction of the courts is not clear.

1.5 **COMPULSORY EDUCATION APPROACH TO PRACTICE OF CHILD MARRIAGE**

Marriage with a Child is one of the factors that contribute to increase in the number of drop-out rate among girls in the North. This also contribute to the high rate of illiteracy in the Northern Nigeria.[92] Thus, poverty and illiteracy are identified as factors contributing to child marriage in the North.[93] High rate of poverty in Nigeria is a cause of child marriage because of its perceived economic benefit by families in the rural communities.[94] Early marriage sometimes provides some indigent families with alternative sources of income in the form of bride price.[95] To address this problem, the National policy on Gender in Basic Education proposed a strategy to encourage state governments to introduce legislation that will prohibit child marriage and enforce free universal education for the girl child.[96] Unfortunately, most governors of the Northern states have not taken steps to make laws to prohibit child marriage in this regard. It is significant to stress that the National Policy was introduced three years after the CRA was enacted heralding the legal regime for protection of the child with provisions prohibiting child marriage. It is therefore surprising that the National Policy on Gender in Basic Education did not refer to provisions on the CRA which promote access to education of the child and also ensure that the child's access to basic education is not interrupted.

Marriage involving a child is a multi- faceted socio-cultural harmful practice which jeopardizes personal development and opportunities of the girl child. The National Strategy on Ending Child Marriage sought to determine how access to free education can be increased and retention of the child in school can be promoted to minimize the risk to child marriage.[97] This underscores the

[91] Ibid, s 50(3)

[92] Felix Daniel Ngarga, 'Impediments to the Domestication of Nigeria CRA by the States' [2016](6)(9) *Research on Humanities and Social Science*, 127

[93] Ukamaka Nnenna Ugwu, 'The Rights of a Girl-Child and Women in Nigeria' [2021](7)(1) Journal of Current Issues in Social Sciences, 62.

[94] Adeyemi Nurat Keyinde, et al,'Causes and Challenges of Girl- Child Marriage in NorthWest Nigeria', [2023](21)(1) *African Anthropologist,* 27. ajol-file-journals_136_articles_245538_submission_proof_245538-1621-589127-1-10-20230409.pdf. Accessed on 4/6/2024 at 11:12am.

[95] Buzome Chukwemeke and Henry Webechi Ugwu, 'Early Child Marriage in Nigeria: Causes, Effects and Remedies', Vol.4(1) *Social Sciences Research*,62

[96] National Policy on Gender in Basic Education (2006) published by the Federal Ministry of Education.

[97] National Strategy to End Child Marriage in Nigeria 2016-2021. Federal Ministry of Women Affairs and Social

education centred approach to problem of child marriage because there seems to be disconnect between the education and other strategies deployed to reduce the trend of child marriage.[98] Child marriage is seen as both a cause and effect of poor education. On one hand, a married child is more likely to drop out of school than the girl child who is in school. On the other hand, the girl child who does not have access to education is also likely to marry young.[99] With marriage, the education of the girl child is disrupted as she is now saddled with a family responsibility as a wife and subsequently mother.[100] Akande and Aminu have submitted that the level of girl child education is generally low due to cultural issues such as child marriage. The notion that a girl's primary aim is to strive to become a good housewife has led to the girl child being relegated to the kitchen. Thus, her education is disrupted while her male counterparts enjoy all opportunities for education which place them at a vantage position in the society.[101]

Therefore, Compulsory education is a strategic mechanism for dealing with the problem of child marriage. It has been reported that increases in education achievement is usually linked to delay in early marriage.[102] Ensuring the girl child's access to education reduces the risk of child marriage. Statistics demonstrate that for every year a girl child delays marriage, her chance of education increases by 5.6% while the chances of accessing secondary education further increases by 6.5%.[103] This strategy of ending child marriage through education has also attracted the attention of the global community culminating in a consensus at the international level of the importance of enrolling and retaining the girl child in school. [104] Therefore, low quality education

Development, 2016. Retrieved from: https://www.girlsnotbrides.org/documents/633/Strategy-to-end-child-marriage_for-printing_08-03-2017.pdf. Accessed on 4/06/2024 at 10:14pm

[98] Michael Addaney and Onuora-Oguno Azubike, 'Education As a Contrivance to Ending Child Marriage in Africa: Perspectives from Nigeria and Uganda', *Armsterdam Law Reform*, (2017), Vol.9(2),p.128.

[99] https://www.girlsnotbrides.org/documents/857/Addressing-child-marriage-through-education-what-the-evidence-shows-knowledge-summary.pdf. Accessed on 4/06/2024 at 10:28pm.

[100] Buzome Chukwemeke, 'Early Child Marriage in Nigeria Causes, Effects and Remedies' [2018](4)(1) *Social Science Research*, 62.

[101] Akande,I.F. and Aminu, S.A, "A Comparative Analysis of the Political Rights of Women under Shari'ah and Statutory Laws in Nigeria", [2020](1)(2), Annur Chambers Annual Journal of Contemporary Issues in Shariah and Comparative Law, 428.

[102] Louise Wetherdge, Negotiated Realities: Adolescent Girls, Formal Schooling, and Early Marriage in Kaduna State, NorthWest Nigeria. (PhD Thesis, University College, 2021) 50.

[103] https://www.brookings.edu/wp-content/uploads/2016/07/walker_girls_education.pdf. Accessed on 4/06/2024 at 10:50pm

[104] Ibid

or lack of access to educational opportunities and unemployment also contribute to rise in child marriage.[105]

Free and Compulsory education for the girl child seems to a goal that has yet to be achieved in the North and certain factors account for inaccessibility to free compulsory education. Another critical factor that contributes to inaccessibility of compulsory education is lack of access to justice based on cost of litigation. It is expensive to engage the service of a lawyer and filing of courts processes involves payment of filing fees.[106] Thus, due to cost of living in the country, it is rarely affordable for a girl child to bear the cost of enforcing her right. This cost increases as legal practitioners also occasionally charge appearance fees in addition to the professional fee.[107] Hence, the court system becomes too expensive and out of reach of majority of Nigerians, especially the girl child.[108]

Another factor that impacts on free and compulsory education is the high rate of insecurity in Northern Nigeria. Due to insecurity, children are kept off the school for weeks and sometime years as has been reported in Kachia, Zango-kataf, Birnin Gwari and Igabi areas of Kaduna State.[109] Since 2014 which marks the beginning of attacks on schools, teachers are afraid to return to the class rooms while parents are scared to send their children to school for fear of kidnapping.[110] This has resulted to rise in number of out-of-school children even as governments in the North have closed down school out of fear of banditry and kidnapping. This clearly shows that activities of bandits in the North severely impact on the education of the girl child and truncate the right to free and compulsory education. This has been confirmed in a study on impact of banditry activities on girl education in the south zone of Sokoto State.[111] The high rate of insecurity in the region therefore justifies the call for suspension of boarding schools in the North. Since the safety of

[105] Olufunmilayo Oyelude and Gunmi Oseni, "Early Marriage: A Barrier to Education and Leadership in Africa", [2022] (24) Global Journal of Applied, Management and Social Sciences, 194.

[106] A.H. Diram and Yusuf Muhammad Yusuf, "Appraisal of Factors Impeding Access to Justice in Northern States of Nigeria", [2019](12),142.

[107] Ibid, 143

[108] Kaka, G.E, "Domestic Violence and the Criminal Justice System in Nigeria" , [2020](1)(1), Annur Chambers Annual Journal of Contemporary Issues in Sharia and Comparative Law, 352.

[109] Benjamin Aleka Tanko and Tanko Linus, "Impact of Insecurity on the Education of the Girl-Child: The Role of Basic Educations in Nigeria", [2023](11)(4), International Journal of Innovative Psychology & Social Development, 99-100. https://www.seahipublications.org/wp-content/uploads/2023/11/IJIPSD-D-11-2023.pdf. Accessed on 6/06/2024 at 2:00pm

[110] Gloria Samdi Puldu and Rwang Patrick Stephen, "Insecurity and Girl- Child Education in North-East Nigeria: A Case of Chibok and Dapchi Quagmire", (2022)(6)(2), *Wukari International Studies Journal*,9.

[111] Balbasatu Ibarahim, et al, 'The Effects of Banditry Activities on Girl Child Education in Sokoto South Senatorial Zone, Sokoto State Nigeria,' *The Beam: Journal of Arts & Sciences,* 7.

teachers and students cannot be guaranteed, the right to free compulsory education is at great risk.[112]

Finally, there are laws such as UBEC Act, CRA and Child Right laws of various States guaranteeing right to education and provision for free compulsory education in Nigeria. However, the problem lies in enforcement of the laws establishing institutions with mandate to ensure access to free and compulsory education. In terms of implementation, provision of funds by government is critical. For instance, in Kaduna state, funding for basic education is managed by an Education sector Plan (ESP) which is a long and medium term strategy that connects the framework with the budget process. This framework identifies the objectives of the state government and links them with the budget for realizing the objectives.[113] However, the budgetary allocation of N115.4 billion on education in Kaduna state which represents 25.19% is supported by the UNESCO benchmarks for education financing.[114] Similarly, Kano State allocated N125.88 billion representing 28.78% of the total budget to education thus exceeding the 26% benchmark prescribed by UNESCO.[115] However, some of the states with low budgetary allocation for education in the North are Sokoto, Kebbi, Katsina, and Zamfara States with 14.06%, 14.95%, 15.13%, and 12.0% respectively which shows that education financing in these states fall short of the 26% benchmark of UNESCO.[116] Therefore, it is glaring that less budgetary allocation for education in the means low funding for education financing in these states.

1.6 **CONCLUSION**

This paper examined culture of child marriage in the Northern Nigeria which is as multi-dimensional as it is complicated. It represents a critical point at which different legal system clash in a bid to determine the validity of the practice. It is established that practice of marriage with a child has been prohibited by various international human rights instruments including the CRC.

[112] Okanezi Bright and Ogeh Obitor W.M, 'Insecurity in Northern Nigeria and its Impact on the Education of the Populace', [2023](5)(3) *International Journal of Advances in Engineering and Management*,1893.

[113] https://cseaafrica.org/wp-content/uploads/2019/07/Financing-Basic-Education-in-Nigeria-3-1.pdf. Accessed on 6/06/2024 at 5:05pm

[114] https://www.thecable.ng/n115bn-for-education-n71bn-for-health-uba-sani-presents-2024-budget-to-kaduna-assembly/. Accessed on 6/06/2024 at 5:20pm

[115] https://blueprint.ng/kano-why-education-has-lion-share-in-2024-budget-commissioner/. Accessed on 6/06/2024 at 5:30pm

[116] https://x.com/StatiSense/status/1761128525942181942?mx=2. Accessed on 6/06/2024 at 5:39pm.

This treaty has been domesticated in Nigeria with the enactment of the CRA, and most states in Nigeria have also adopted the Child Right laws. However, the Constitution has recognized Islamic law and recognized the application of customary law to marriage including traditional marriage. Nonetheless, Islamic law and customary law seem to recognize the practice of Child Marriage and do not provide age of majority of the girl. In fact, some of the Child Rights laws such as Child Protection Laws of Niger, kano, Zamfara, and Kastina State seem to permit the practice of Child Marriage.

This effective strategy to ending the practice of child marriage is by promoting the right to free compulsory education of the girl child. It is imperative to note that even though the right to education is not justiciable under the Constitution, the recent trend is tilting towards the recognition and enforcement of the right to free and compulsory education. More so, there are certain challenges militating against the realization of the girl child's right to free and compulsory education. Such factors include lack of access to justice, poverty, inadequate budgetary allocation to basic education, and insecurity. It is believed that if these problems are addressed, the right to free compulsory education will be guaranteed and protected, and this will in turn reduce the prevalence of child marriage in the affected societies.

However, this paper argued that compulsory education is not a silver bullet as it cannot adequately tackle child marriage in Northern Nigeria. In fact, the right to education of the girl child is not adequately protected because it is not enforceable under Nigerian Constitution. Secondly, the laws and customary laws relating to Marriage in Nigeria are archaic and have not defined age of marriage. This lacuna in the laws encourages child marriage in Nigeria, especially Northern Nigeria. Finally, there is inconsistency between the CRA and the Child Rights laws of some Northern States which have encouraged culture of marriage with children in Northern Nigeria. Based on the foregoing findings, it is recommended that right to education should be justiciable and enforceable in Nigeria to enable the girl child enforce their right to education. Secondly, the laws relating to marriage should be amended to provide for 18 years as age of marriage in Nigeria and to reflect international instruments and laws which prohibit child marriage. Finally, the Child Right Laws of the Northern States should be amended to clearly prohibit child marriage and their provisions should reflect the provisions of the CRA and CRC.

SUSTAINABILITY OF *SUKUK* (ISLAMIC BOND) AS FINANCING INSTRUMENT FOR BRIDGING INFRASTRUCTURAL DEFICITS IN NIGERIA

USMAN YUSUF ABDULSALAM*

Abstract:

Sukuk has become a viable financial instrument to reduce infrastructural deficit or the number of abandoned projects in the global capital market across the whole world. Recent situations reveal that the financial instability and inadequacy of funding at the disposal of the government to provide good facilities and maintain them are the major factors that heavily contributes to the infrastructural deficits in Nigeria. This calls for the pressing need to handle the situations. Adopting a doctrinal method, the paper reviewed and extensively analyzed the existing works on sukuk as being currently practised in Nigeria. The paper addressed the sustainability of sukuk as one of the alternative sources of funding in bridging the infrastructural deficit in Nigeria. The paper examined the challenges in the practice adoption sukuk in Nigeria. The paper recommends, among others, that if sukuk regime gains wider acceptance in Nigeria by tackling all the highlighted challenges, it will enhance the infrastructural development in the country.

Keywords: *Sukuk*, Infrastructure Deficit, Financial Instrument, Sustainability, Nigeria.

1.0 INTRODUCTION

Infrastructures as the determinant of the economic growth in a country are considered as the basic facilities and services needed in a country aims at the swift development.[1] Without a thriving infrastructure sectors in a country, the impracticability of achieving economic development and growth is certain. In this case, many countries in bridging the infrastructural deficit adopt certain methods to address the infrastructural deficit and improve the economic growth of the country in a sustainable way.[2]

Owing to the level of poverty ridden Nigeria as a country; the inability of the government to finance some projects has led to the low funds allocated or appropriated to the infrastructures.[3] There are varieties of options for tackling infrastructural deficits via different capital channels and different financial structures or instruments such as listed stocks and bonds as well as *sukuk* which is one of Islamic investment schemes introduced into the world capital market to take care of capital mobilization.[4]

The efficient Islamic capital market is very fundamental and useful in aiding the economic growth in the long run as it stands as a link for sourcing funds for the economic development of a country which is carried out through buying and selling of shares and bonds.[5] However, the contribution of *sukuk* as *Shari'ah* compliant bonds towards reducing the level of infrastructural deficit in Nigeria cannot be overlooked even though there are many policies put in place to enhance the infrastructural development of the country.

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[1] FO Nedozi, JO Obasanmi and JA Ighata, 'Infrastructural Development and Economic Growth in Nigeria: Using Simultaneous Equation' J Economics, (2014) 5 (3) 326.

[2] C Okpalaoka, 'Infrastructural Challenges in Nigeria and the Effect on the Nigerians Economy: A Review of Literature' Environmental and Earth Sciences Research Journal (2021) 8 (4), https://www.researchgate.net/publication accessed 14 March 2024

[3] AB Sani, AK Nasir and TO Bakare, 'Sukuk as a Viable Option Instrument of Financing Infrastructural Development in Nigeria' Gusau International Journal of Management and Social Sciences, (2022) 5 (2) https://www.ajol.info/index.php/gijmss/article/view/ accessed 10 February, 2024

[4] Ibid

[5] AA Sa'ad, 'The Islamic Perspective on Debt: Its Relevance to Islamic Capital Market in Nigeria' KI Dandago, *et al*, (eds) *Essentials of Islamic Banking and Finance in Nigeria* (Benchmark Publisher, Kano, 2013) 187

This paper seeks to examine the sustainability of *sukuk* as a financing instrument for bridging the infrastructural deficit in Nigeria. This discussion is organized into five sections. This first section constitutes the introduction. Section two presents the meaning, nature and objective of *sukuk* as Islamic compliant bonds. Section three examines the structures and classes of *sukuk*. Section four deals with legal framework guiding *sukuk* in Nigeria, and five dwells on the sustainability of *sukuk* towards the infrastructural development in Nigeria and finally, section six is the conclusion and recommendation.

2.0 DEFINITION, NATURE AND OBJECTIVE OF *SUKUK*:

In a bid to discuss the sustainability of *sukuk* as a financial instrument for bridging the infrastructural deficit in Nigeria, it is pertinent to explore the definition of *sukuk* as one of Islamic capital market, its nature and its objective.

2.1 DEFINITION OF *SUKUK*:

Different authors have made attempts in defining the concept of *sukuk* (Islamic bonds). The word "*sukuk*" is said to be the plural of "*Sakk*" in Arabic language.[6] Though, *sukuk* as an Islamic bond was not known during the life time of the Prophet but the word "*Sakk*" was used to mean different things, one of which are; a book or document, papers as well as to introduce or issue currency.[7]

According to Abu Huraira's (R.A) statement to Marwan in putting an end to what did occur during the time of the Prophet's followers, when they used to sell among themselves some commodities using a "*sakk*" which had previously been exchanged for food to its holder from the Islamic Treasury (*Baital-Mal*): He said: "You permit the sale of (*sikak*) when the Prophet (PBUH) has not allowed the sale of food till it is paid".[8] *Sukuk* is also referred to as cheque, and this was the argument of some scholars that the word 'cheque' was derived from the word '*sakk'*.[9] This word

[6] U Idris, *Sukuk*: 'Meaning, Structure and Standards' in UR Shehu, *et al*, (eds) *Readings in Islamic Banking and Finance* (Benchmark Publisher Ltd. Kano, 2013) 110 – 11.
[7] Ibid.
[8] SI Abdullahi, 'Sukuk as an Alternative Source of Funds for the Nigeria Government' in KI Dandago, *et al*, (eds) *Essentials of Islamic Banking and Finance in Nigeria* (Benchmark Publisher, Kano, 2013) 215
[9] Ibid

"*sakk*" here equates bonds in modern age as the two serve the same purpose. Therefore, the usage of the word is not new as it was used to issue currency.[10]

Technically, the word '*sukuk'* is referred to as 'to strike one's seal on a document'.[11] *Sukuk* is therefore defined as a certificate of equal value representing undivided shares in ownership of tangible assets, usufructs and services, assets of particular projects or special investment activity.[12] *Sukuk* is also said to mean investment certificates or notes of equal value which evidences undivided interest/ownership of tangible assets, usufructs and services or investment in the assets of particular projects or special investment activity using *Shari'ah* principles and concepts approved by the Securities and Exchange Commission (SEC).[13]

Put differently, *Sukuk* is equally referred to as Islamic Bonds, meaning a financial certificate with *Shari'ah* Compliance. It serves as Islamic bonds or Islamic investment certificate as the case may be, represents the proportional ownership of an existing asset or a pool of diversified assets, and a pledge against existing or future cash flows generated from these assets for a specified period of time.[14]

From the above definitions, *sukuk* is therefore, a financial instrument or security with *Shari'ah* compliance issued in form of legal certificate, deed or document represents undivided shares of the *sukuk* holders, i.e.; the investors, in particular assets or projects.

2.2 NATURE AND OBJECTIVE OF *SUKUK* IN ISLAMIC CAPITAL MARKET:

Islamic law has put in place certain principles to regulate Islamic capital market operations under which *sukuk* falls.[15] These principles are the same with those that guide the Islamic financial system as whole.[16] The Islamic capital market as one of the Islamic products was introduced as an

[10] Ibid
[11] MJ T McMillen, 'Contractual Enforceability Issues: Sukuk and Capital Markets Development". Chicago Journal of International Law (2007), in U Idris '*Sukuk: Meaning, Structure and Standards' in Reading in Islamic Banking and Finance*'111
[12] Islamic Finance Annual Guide, IFN, 2024https://ceif.iba.edu.pk/ifn-annaul-guide2024 accessed, 20 November, 2024
[13] R 569 Securities and Exchange Commission Rule and Regulation, 2013
[14] TA Afshar, 'Compare and Contrast Sukuk (Islamic Bonds) with Conventional Bonds, Are they Compatible https://www.isfin.net/sites/isfin.com accessed 3 February 2024
[15] A Umar, 'Principles of Islamic Capital Market' in UR Shehu, *et al*, (eds) *Readings in Islamic Banking and Finance* (Benchmark Publisher Ltd. Kano, 2013) 100
[16] Ibid

alternative to Conventional Capital Market, which is free from all the prohibited activities as can be seen in conventional one, such as element of *riba* (usury), *maisir* (gambling) and *gharar* (ambiguity).[17] Therefore, Islamic capital markets are mainly set out to carry out all the useful and lawful functions with justice and equitable distribution.[18]

The lending activities or loan as the case may be, is ordinarily allowed in Islam to fulfill a short-term financial need of the borrower.[19] The major principle therein is that the amount given out must be equivalent to amount taken in return.[20] Therefore, the reason for making an investment instrument or certificate with the *Shari'ah* compliant is that, it should not represent interest-bearing debt as dominant part of the underlying assets.[21]

Sukuk are securities which in compliance with the Islamic principles, and its investment principles clearly declare prohibited the interest-bearing activities either directly or by implication.[22] In other words, *sukuk* as Islamic debt securities are financial instruments that are structured as an alternative to the conventional debt securities and free from any elements of prohibited activities in Islam.[23]

Sukuk as an instrument in Islamic finance has certain similarities with bond market in the conventional finance, this is because both instruments are usually issued to raise capital particularly for long term investment. However, *sukuk*, unlike conventional bond allows no uncertainty (*gharar*), interest (*Riba*) and gambling (*Maisir*) as it is a *Shari'ah* compliant financial instrument.[24] *Sukuk* instruments therefore imply proof of ownership title and are usually utilized by financial institutions and corporate to raise funds.

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[17] IA Oladapo, 'Issues and Prospects in Developing an Islamic Capital Market in Nigeria' in KI Dandago, *et al,* (eds) '*Essentials of Islamic Banking and Finance in Nigeria* (Benchmark Publisher, Kano, 2013) 166

[18] Ibid

[19] W Ahmad and R Mat Radzi 'Sustainability of Sukuk and Conventional Bonds during Financial Crisis: Malaysian Capital Markets' Global Economy and Financial Journal (2011) 4 (2) 33

[20] Ibid

[21] Ibid

[22] SA Shaikh and S Saeed, 'Sukuk Bond: The Global Islamic Financial Instrument'https://www.researchgate.net/publication/47799645_Sukuk_Bond_The_Global_Islamic_Financial_Instrument accessed 21 February, 2024

[23] Y Ibrahim and M Minai, 'Islamic Bonds and the Wealth Effects: Evidence from Malaysia' Investment Management and Financial Innovations (2009) 6 (1) https://www.researchgate.net/publication/262494667_Islamic_Bonds_and_the_Wealth_Effects_Evidence_from_Malaysia accessed 25 February 2024

[24] AL AbdulRauf, 'Emerging Role for Sukuk in the Capital Market' South East Asia Journal of Contemporary Business, Economics and Law (2013) 2 (2) 41

This non-interest bearing instrument stands as financing vehicle to raise fund for infrastructure projects, real estate development, asset acquisition, business expansion and other socio-economic projects.[25] In the event of default by the *sukuk* issuer, the *sukuk* generally and reasonably assures *sukuk* holders i.e.; the investors, the ability to recover their investments whether in full or in part, form the liquidation of the assets.[26] *Sukuk* therefore backed by tangible and intangible collateral and give undivided ownership of the underlying assets for an agreed period for investors.[27]

One of objectives of *Shari'ah* is to alleviate hardship and expand human development and well-being.[28] *Sukuk* instrument therefore has certain objectives, one of which is that, it serves as an instrument for capital market development and resource mobilization and as an alternative financing tool for economic development of the public and private sectors.[29] This instrument also introduced to facilitate the management of assets in the Islamic banking system.[30] It is generally understood that unlike conventional bond, Islamic capital market products and services are meant to meet the needs of those who seek to invest in conformance with Islamic principles.[31]

Sukuk, as an alternative source of funding, represents a common share of ownership of assets which purposely made available for investments. These assets may be non-monetary assets, usufructs, a mixture of tangible assets, and it may be usufructs and monetary assets.[32] Investment *sukuk* are issued in conformance with the principles that regulate Islamic contracts. Therefore, *sukuk* are governed and regulated in line with the rules and principles of respective contract. The shares and

[25] Standing Committee for Economic and Commercial Co-operation of the Organization of Islamic Cooperation (COMCEC), 'The Role of Sukuk in Islamic Capital Markets'(2018)https://sbb.gov.tr/wp-content/uploads/2018/11/The_Role_of_Sukuk_in_Islamic_Capital_Markets accessed 15 February, 2024

[26] AA Maiyaki, 'Principles of Islamic Capital Market' *International Journal of Academic Research in Accounting, Finance and Management Sciences* (2013) 3 (4) 280

[27] Ibid 281

[28] AW Dusuki, 'Do Equity-Based Sukuk Structures in Islamic Capital Markets Manifest the Objectives of Shari'ah' Journal of Financial Services Marketing (2010) 15 (3) https://doi.org/10.1057/fsm.2010.17 accessed 15 January 2025

[29] M Bennett and Z Iqbal, ' The Role of Sukuk in Meeting Global Development Challenges' in S Jaffer (ed) 'Global Growth, Opportunities and Challenges in the Sukuk Market' https://pubdocs.worldbank.org/en/482341507749577391/euromoney-handbook-2011-role-of-sukuk-in-meeting-global-development-challenges accessed 14 June 2024

[30] Ibid

[31] M Ayub, '*Understanding Islamic Finance'* (John Wiley & Sons, Ltd, 2007) 390

[32] [32] Standing Committee for Economic and Commercial Co-operation of the Organization of Islamic Cooperation (COMCEC)https://www.comcec.org/wp-content/ accessed 5 August 2024

losses of the *sukuk* -holder are determined by the type of *sukuk* involved as the certificates display.[33]

3.0 STRUCTURES AND CLASS OF *SUKUK*:

Sukuk as a universally considered instrument in the most active instrument in Islamic debt market, is structured in line with the principles of *Shari'ah* to provide and enhance the development of the activities in the Islamic Capital Market.[34] However, different *sukuk* structures determine different parties involved and same depend on the types and the nature of contract under Islamic law. Notwithstanding, the issuance of *sukuk* ordinarily involve the following parties;[35]

1. The originator: it is a legal entity such as government or corporations which sell the asset (s) to the Special-Purpose Vehicle that issues and at the same time receives the proceeds from the sale of the *sukuk*. It can also be the obligor or related to obligor who uses the realized capital or funds from the investors for a particular project.
2. The Special-Purpose Vehicle (SPV): it is a separate entity set up or designed purposely to manage the issue. It mobilizes funds from the investors, issues *sukuk* instrument, and purchases assets from the originator. The SPV usually at the end, remits any funds collected or realized from the *sukuk* structure to the investors.
3. The *Sukuk*-holders: this is the investors who invest their capital in *sukuk* structure and certificate is issued in their favor.
4. *Shari'ah* Adviser: the formal authority which approves the *sukuk* structures in terms of *Shari'ah* compliance. *Shari'ah* adviser could be a fund manager registered by the Commission to manage an Islamic fund or a bank licensed for non-interest banking at the institutional level issuing the *sukuk* and/or at the central level.[36]

Based on different contracts recognized under Islamic law, *sukuk* investment can be classified into different models or types such as *Sukuk al-Ijarah*, *sukuk al-Musharakah*, sukuk *al-Murabahah*,

[33] ibid
[34] M Bennett and Z Iqbal, (n 29).
[35] M Ayub, (n 31) 391
[36] R 569 SEC Rules.

sukuk al-Mudarabah, *sukuk Salam* and *sukuk Istihna*. These classes of *sukuk* would be analyzed one after the other.

3.1 *SUKUK AL-IJARAH*

The contract of *Ijarah* is known as rental or leasing contract. This contract is used in different ways and in line with the principle of Islamic law, one of which is when a party purchases and leases the equipment to the other party for a rental fee.[37] In another words, a landlord giving his house out for rent in which a tenant occupies for certain period or a company leases some of airplanes to airline firms for certain period in return of consideration.[38]

In respect of the above, *Ijarah* can be applied in *sukuk* investment whereby the underlying assets will be rented by the owner (the landlord) to the user (the tenant) in which the tenant owns the usufruct of the property for certain period as the parties agreed upon. In that event, the certificate of ownership of usufructs will be issued to on stand-alone assets identified on the balance sheet.[39]

Ijarah sukuk as an alternative tool for the government to replace interest-based borrowing in discharging government functions such as construction of road, classroom, and other infrastructures needed in the country.[40]

3.2: *SUKUK MUDARABAH*:

Mudarabah as a contract which involves two or more parties where one party is known as investor (*rabal-mal*) who entrusts his capital to the other party called entrepreneur (*Mudarib*) who uses the capital and the profit therein will be shared according to the pre-agreed ratio, and when there is loss, the capital provider bear it.[41]

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[37] ON Olaniyi, A Echchabi and MF Alfarisi, 'Sukuk as an Alternative Mechanism for Infrastructure Development and Improvement of Small Businesses in Nigeria*'* in KI Dandago*, et al*, (eds) 'Essentials of Islamic Banking and Finance in Nigeria' (Benchmark Publisher, Kano, 2013) 205- 210

[38] Ibid, 207

[39] U Idris (n 6) 113

[40] SI Abdullahi (n 8) 218 -219

[41] MI Sa'id and KG Muhammad, '*An Introduction to Islamic Law of Contract*' (Usmanu Danfodiyo University Press, Sokoto, 2012) 125

In Sukuk *mudarabah* therefore, the same features of the *mudarabah* structure apply for use as the underlying structure in a *sukuk* issuance as it represents units of equal value in the *mudarabah* capital, and *sukuk* registered in the names of the *sukuk* certificate holders on the basis of undivided ownership of shares in the *mudaraba* capital. The investors according to their contribution get their returns from accrued profit of the *mudaraba* capital in conformance with the pre-agreed ratio between the *Rab al-maal* and the *Mudarib*.[42]

Therefore, The Special-Purpose Vehicle (SPV) will issues *sukuk* to the investors and the SPV stands as a trustee on behalf of the investors over the *mudarabah* capital. *Mudarab*, the originator who is to spend his skills and efforts on *Mudaraba* enterprise, enters into a *Mudaraba* agreement with the SPV known as *Rab al-maal* who contributes the principal amount to carry out a Sharia compliant *mudaraba* enterprise. Therefore, in the event of loss, SPV would be the one to borne the loss arises from the *mudarabah* enterprise.[43]

3.3: *SUKUK MUSHARAKAH*:

Musharakah as the name implies, is a contract involves two or more persons participating in a business venture with the agreement that profit and loss realized therefrom will be distributed based on pre-agreed ratio or capital contribution in the said venture.[44] Therefore, *sukuk* in *musharakah* contract is a situation whereby huge amounts are needed to carry out a particular project and *Musharakah* certificates of equal value are issued to the investors for mobilization of capital needed for the project on the basis of partnership.[45] In this situation, the holders of the *Musharakah* certificates, that is, *sukuk* as comes under *Musharakah* contract become owners of the project in question based on their respective shares.[46] This *sukuk Musharakah* can actually be issued by the companies or even an individual for the construction of hospital, factories and the likes. It must be noted here that the same principles guides *Musharakah.*

3.4 *SUKUK MURABAHAH*:

[42] M Ayub (n 31) 391
[43] Ibid
[44] H Hanafi, 'Current Practices of Islamic Home Financing: A Case of Musharakah Mutanaqisah in Malaysiahttps://core.ac.uk accessed 14 June 2024
[45] ON Olaniyi, A Echchabi and MF Alfarisi (n 37) 205
[46] Ibid.

Murabahah otherwise known as cost-plus sale, is the sale of commodity for the price of which the seller has purchased it with addition of a stated profit known to both the seller and the buyer.[47]In other words, it is a type of the contract where the seller tells the purchaser the amount of profit the seller is making form the business.[48]This contract as a recognized and valid contract in Islamic banking products can also be used in *sukuk* structure.[49]

Sukuk Murabahah is used also as the underlying structure in a *sukuk* issuance. In this type of *sukuk*, SPV gets capital from the investors by issuing *sukuk* certificates to them, and applies the capital to acquire commodities from the commodity supplier. After, SPV sells the said commodities upon signing an agreement known as a master agreement between SPV and the Originator, to the Originator (company or government) in which the price and profits will be clearly disclosed.[50] The originator therefore be paying for the commodities on installment basis to the SPV. The commodities thereafter be sold by the originator to another buy on spot basis. The SPV upon receiving deferred price from the originator pays to the investor the proceeds.[51]

3.5 *SUKUK SALAM*:

*Bay' salam i*s known as a contract in which the seller of the goods makes an undertaking or promises to deliver the goods to the buyer in the future date.[52] This type of contract can equally be used in *sukuk* structure as the contract fit to be used in agricultural activities.[53] In this nature of *sukuk*, there will be an agreement between the SPV and the obligor.[54] The obligor sells assets or commodity to the SPV which will be delivered on the future date. SPV as a trustee issues *sukuk* certificate to raise capital from the investors. SPV thereafter pays for the assets or commodity to the obligor with the capital generated from the investors. The obligor then delivers the commodity

[47] NA Saleh, '*Unlawful Gain and Legitimate Profit in Islamic Law* (University Press, Cambridge, 1986) 94
[48] MI Sa'id and KG Muhammad (n 41) 125
[49] MI Abdullah, '*A Theoretical Introduction to Islamic Banking and Finance*' in K. I Dandago, *et al*, (eds) 'Essentials of Islamic Banking and Finance in Nigeria' (Benchmark Publisher, Kano, 2013) 26
[50] Islamic Markets-'Sukuk Al-Murabahahttps://islamicmarkets.com/education/sukuk-al-murabaha>accessed on 21 February, 2024
[51] ibid
[52] MI Sa'id and KG Muhammad (n 41) 127
[53] ON Olaniyi, A Echchabi and Mohamed. F Alfarisi (n 37) ,208
[54] Ibid, 209

to the SPV, and the SPV sells the said commodity back to another party from who the SPV receives purchase price. The SPV as a trustee to the investors distributes money to the investors.[55]

3.6 *SUKUK ISTISNA*:

Ordinarily, *Istisna* is a form of contractual agreement entered into by parties for manufacturing goods that would be delivered in the future with the advance payment.[56] The price in this kind of contract is fixed. In this contract the purchaser orders the manufacturer the type of the goods he needs.[57]

In practice of *sukuk Istisna*, the SPV issues *sukuk* to mobilize the capital to fund a particular project. Thereafter, the capital realized will be paid to a manufacturer or contractor as the case may be. The originator that is, the contractor or manufacturer agrees to construct the project and delivers same in the future date.[58] The capital realized from the investors will be given to the originator to carry out the project. The SPV when the project is completed sells the project to a potential buyer and the proceeds will be distributed to the investors.[59]

4.0 LEGAL FRAMEWORK GUIDING *SUKUK* INVESTMENT IN NIGERIA:

For the rapid growth and development of Islamic banking and finance system with its principles of *Shari'ah* Compliance in Nigeria, there are certain legal frameworks put in place to regulate and guide its operations such as Bank and Others Financial Institution Act, Central Bank of Nigeria (CBN) Act, Investment and Securities Act 2007 and Securities and Exchange Commission Rules.[60]

[55] M Ayub (n 31) 391
[56] MI Abdullah (n 49) 27
[57] N Azurah. M Kamdari and R Yusoff 'The Contract of Bay-al-Salam and Bay-al-Istisna in Islamic Commercial Law: A Comparative and Application Analysis https://www.researchgate.net/publication/309190034_The_Contract_of_Bay_al_Salam_and_Bay-al-Istisna_in_Islamic_Commercial_Law_A_Comparative_and_Application_Analysis_for_WAQF accessed 2 March 2024
[58] IA Oladapo (n 17)
[59] Ibid
[60] MO Oladunjoye, 'Sukuk as a Tool for Infrastructural Development in Nigeria'https://kolaawodeinandco.com/assets/dI/Published%20Sukuk%20Article accessed 23 February 2024

Sukuk activity as one of Islamic financing instruments is also regulated by laws in Nigeria. Though, there is no particular law enacted for that purpose.[61] The provision of the Investment and Securities Act, 2007 allows the Securities and Exchange Commission to register and control securities exchanges, corporate and individual capital market operations and collective investment scheme in the country.[62] Therefore, in 2013, Nigeria Security and Exchange Commission (SEC) approved new rules allowing firms to issue Islamic bonds, *sukuk* to attract Middle Eastern investors and promote Islamic finance as a whole in Nigeria.[63]

The Security and Exchange Commission Rules applies to any *sukuk* structure which is offered or issued by the local or foreign entities, that is, within the regulatory purview of the commission, any *sukuk* which is denominated in Naira or in foreign currencies; and any *sukuk* structure which is listed, convertible, exchangeable, redeemable or otherwise.[64] The rules also set out some *Shari'ah* principles which are meant to be complied with in the issuance, offering or invitation of *sukuk* by all issuers.[65]

Public companies which includes Special-Purpose Vehicle, State Government, Local Government, and Government agencies as well as multilateral agencies are eligible to issue, offer or make and invitation, provided that the approval has been sought from the commission.[66] Not only this, the companies issuing, offering or making an invitation of *sukuk* with the agreement of trustee must appoint a *Shari'ah* adviser who is registered or so recognized by the commission to advise them on all aspects of the *sukuk* including documentation and structuring, to issue a *Shari'ah* certification which set out the basis and rationale of the structure and mechanism of the *sukuk* issue, the applicable *Shari'ah* principles used for the *sukuk* issue and relevant *Shari'ah* matters as relate to the documentation of the *sukuk* issue.[67] It is also the responsibility of the *Shari'ah* adviser to ensure that the applicable *Shari'ah* principles and any other relevant rulings in that respect are

[61] Ibid
[62] Islamic Financial Services Industry Stability Report 2018https://www.ifsb.org/download.php?id=4811&lang=English&pg=/index.php accessed 23rd February, 2024
[63] U Idris (n 6)57
[64] R 570 (1) (a)-(c) SEC Rules
[65] R 570 (2) and (3) SEC Rules
[66] R 572 SEC Rules
[67] R 574(1) SEC Rules.

complied with and also apply *ijtihad* as a *Shari'ah* adviser to ensure that all aspects relating to *sukuk* issuance are in compliance with *Shari'ah* principles.[68]

Rule 575 of Securities and Exchange Commission Rule provides that the underlying asset of *sukuk* whether tangible or intangible must be of *Shari'ah* compliant, and any asset which is under encumbrance or asset that is jointly owned with another party cannot be used in *sukuk* except the consent of the charge or joint owner has been sought. Not only this, the asset pricing in *sukuk* contract that involves the sale and purchase of underlying assets must not exceed 1.51 times of the market value of the asset and this usually applicable to *murabahah*, *ijarah* and *istisna* contracts.

Stemming from the above, the available legal frameworks for issuance of *sukuk* in Nigeria can be generally considered adequate. However, apart from the Securities and Exchange Commission (SEC) Rules, the Central Bank of Nigeria (CBN) Act and guidelines which are the Laws of the Federal Republic of Nigeria as well as relevant sections in the Islamic law of commercial transactions that serve as governing laws, there are no precedents on the extent to which these laws would be applied by the courts in Nigeria when it comes to implementation.

5.0: THE SUSTAINABILITY OF *SUKUK* FOR BRIDGING INFRASTRUCTURAL DEFICIT IN NIGERIA:

Ordinarily, infrastructural development is a backbone of a country as it plays a great role in economic growth and increases the potential development by constructing economic and social infrastructures across the country.[69] However, infrastructural development of a country is to be financed with public funds appropriated for that purpose.[70] It is therefore a statutory responsibility of government to look for how that will be achieved and accomplished.[71]

Infrastructural development can be financed by adopting different capital channels or mechanisms which may also involve different financial instruments.[72] In Nigeria, we have some financial

[68] R 574 (1) SEC Rules.
[69] IA Abdulkareem, M Mahmud and A Abdulganiyy,'Sukuk, Infrastructural Development and Economic Growth: A Theoretical Lens for Abandoned Projects in Nigeria-Albukhary Social Business Journalhttps://asbj.aiu.edu.my/images/Vol2Issue1Jun2021/3 accessed 5 March 2024
[70] H Ijaiya, '*Control of Public Finance by The Legislature: A Critical Analysis*' in Wahab. O Egbewole (ed) 'The Jurist- Annual Publication of the Law Students' Society, University of Ilorin (2005) 10, 19
[71] ibid
[72] ibid

instruments in capital markets such as listed stocks and bonds and they are well established and regulated by regulatory frameworks. For example, banks are some of funds provider in making infrastructure loan available to the government.[73] Not long ago there is no doubt that Nigeria due to worry for the growth and development of the nation forced to fall into debt despite the fact that Nigeria's foreign debts has been cancelled in 2005 by the Paris club.[74] The public pressure as a contributing element forced the government to also consider another medium of mobilizing funds such as short term foreign liquidity facility, long term debt, as well as domestic borrowing, and caused a quick accumulation of another foreign debt.[75]

Islamic finance in Nigeria which includes *sukuk* products, even though still developing, has made a great positive impact on the infrastructural development as it encourages more investors to invest their capitals for construction and rehabilitation of roads, hospitals and the likes.[76] The Securities Exchange Commission recognizes an Islamic Development Bank which is a bank licensed by the Central Bank of Nigeria (CBN) to operate as non-interest bank to manage in a bid to manage a Shari'ah compliant fund, therefore, *sukuk* is considered as a sustainable investment opportunity within the ecosystem in Nigeria .[77]

It products grew to N1.09 trillion in 2024 as the year has been a pivotal year for Islamic finance in Nigeria considering notable developments that have bolstered within the Nigeria financial sector.[78] *Sukuk*, within the Capital Markets space, offers Shari'ah compliant and non-interest bearing investment option to a growing pool of ethical investors.[79]

[73] Jackson Etti & Edu, 'Infrastructural Development in Nigeria: Challenges for Private Sector Participation and the way Forwardhttps://jee.africa/wp-content/uploads/2021/infrastructural-Development-in-Nigeria-Challenges-for-Private-Sector-Participation-and-the-Way-Forward accessed 14 February 2024
[74] ibid
[75] SI Abdullahi (n 8) 218
[76] A Sunmola and C Okoro, 'Islamic Finance in Nigeria: 2024 Year in Review and 2025 Outlook'https://uubo.org/wp-content/uploads/2024/12/Islamic-Finance-in-Nigeria-2024-Year-in-Review-and-2025-Outlook accessed 7 April, 2025
[77] Ibid. See also R 574 (2) (b) of SEC Rules
[78] Ibid
[79] Ibid

Nigeria Federal Government has continuously leveraged *sukuk* to fund essential infrastructural projects through the Federal Government Roads *Sukuk* Company 1 Plc.[80] For its smooth operation, the government provides regulatory frameworks which includes Securities Exchanges Commission Rules, the Central Bank of Nigeria Act among other laws, to govern the issuance of *sukuk*.[81] This equally assist the application of *sukuk* proceeds to fund the development of major infrastructure projects which include the construction and upgrade of highways and other road networks across the country.[82]

To ensure the management of *sukuk* proceeds, the *sukuk* issuers are administered by the Debt Management Officers (DMO) and the Delegate Trustees.[83] The Trust Deed is prepared in favour and for the absolute benefit of the *Sukuk*-holders as the rights and obligations of the Issuer under the Deed of Declaration of Trust (DOT) which will be performed by the Delegate Trustees appointed by the issuer to ensure that the *sukuk* products are sustainable in Nigeria.[84]

Factors that contributes to the sustainability of *sukuk* products in Nigeria in tackling infrastructural deficits are many but not limited to the followings;

i. **Appointment of Financial Adviser**: the financial advisers with expertise are appointed in a bid to properly structure an Islamic finance and who are under the guidance of the *Shari'ah* Board, and the issuance of *sukuk* is reviewed and adjudged to be *Shari'ah* compliant by the Financial Regulatory Advisory Council of Experts (FRACE) of the Central Bank of Nigeria.[85]

ii. **Proper Supervision and Monitoring**: The Federal Government oversees the appointment of contractors for the road projects in respect of which capital is invested and considers

[80] LA Sulaiman and ID Rabiu, 'Impact of Sukuk (Islamic Bond) Finance on Infrastructural Development Financing in Nigeria' International Journal of Humanities and Applied Social Science, (6 (2), 2023 27-35https://www.researchgate.com accessed 10 April, 2025

[81] AI Abikan, 'Islamic Banking as Non-Interest Banking Fact or Fiction' Shari'ah Law Reports, 2012https://www.researchgate.net accessed 5 April, 2025

[82] M. O Oladunjoye, (n 60)

[83]FMDQ- Sukuk Listing Rules- OTC Securities Exchange empowering the Nigerian debt capital & FX marketshttps://fmdqgroup.com/greenexchange/wp-content/uploads/2024/o5/FMDQ-Sukuk-Rules-SEC-Approved accessed 9 April, 2025

[84] Federal Government of Nigeria (FGN) VI 2023 Draft Prospectushttps://www.stanbicibtccapital.com accessed 7 April, 2025. See Rule 5.3 of FMDQ-Sukuk Rules, 2022

[85] R 579 SEC Rules, 2013

highly regarded companies or firms to limit the risk which may surface in *sukuk* market.[86] To prevent default risk, it is under the terms and conditions of the agreement that the obligor would reimburse the principal amount.[87]

iii. **Enactment of Regulatory Frameworks and Stability of the Nigerian Securities Laws**: Securities Exchange Commission Rules and other laws that regulate the *sukuk* products have not been subjected to changes over the last decade, the change of which may likely affect the *sukuk*.[88] These regulatory frameworks aimed at proper monitoring of *sukuk* till stage of maturity under the supervision of both the Central Bank of Nigeria *Shari'ah* Council (CSC) and *Shari'ah* Advisory Committee (SAC) of every other banks.[89]

iv. **Embracing and Discharge of Obligation by The Federal Government**: Just of recent, The Federal Government proposed issuing its first dollar-denominated *sukuk* which valued US$500 million and this proposal got the approval of the lawmakers as part of President Bola Tinubu's plan to borrow billions from foreign investors to help address the budget deficit.[90] Government also discharges its direct obligation and debt commitments as relates to *sukuk* once it is matured and never defaulted in any sort of creditor arrangement as relates to infrastructural projects.[91]

v. **Exemption from Taxation**: *Sukuk* (Islamic bonds) and its proceeds from companies income tax (CIT), personal income tax and value-added tax as in the case of conventional bonds.[92] The tax exemption only applies to *sukuk* issued by the Federal Government.[93]

There are many factors that led some countries all over the world to opt to various mediums in financing the infrastructures.[94] These factors have equally forced many countries to embrace the

[86] B Khanalizadeh, A Rahimzadeh and M Afsharirad, 'Investigating the Impact of Financial, Economic, and Political Risk and Economic Complexity on SUkuk Market Development (NARDL Approach)' Iranian Journal of Finance 8 (2), 2024, 112https://www.ijfifsa.ir accessed 10 April, 2025
[87] R 586 (2) SEC Rules
[88] AI Abikan (n 81)
[89] Ibid
[90] A Sunmola and C Okoro (n 76)
[91] Ibid
[92] See The Companies Income Tax (Exemption of Bonds and Short-Term Government Securities) Order, 2011, the Personal Income Tax (Amendment) Act 2011 and Value Added Tax (Exemption of Proceeds of the Disposal of Government and Corporate Securities) Order 2011
[93] Corporate Income Tax (Exemption of Bonds and Short Term Government Securities) Order, 2011
[94] MO Oladunjoye (n 60)

Islamic bonds, *sukuk* as an alternative source of funding.[95] It is also a duty of the government or company that intend to raising funds from other sources to consider the reliable and cheaper one.[96] Therefore, *sukuk* as non-interest instrument is reliable and cheaper because it is arranged and planned to benefit all the parties involve.[97] Unlike *sukuk*, the conventional bond which is interest bearing bond has become increasingly costlier and even difficult to assess.[98] For instance, in UK, the government recognizes *sukuk* as the best alternative source for raising capital and prefers it to the existing interest-based conventional bonds or securities.[99]

Sukuk as *Shari'ah* compliant securities is the latest instrument to come rapidly on the capital market which is open to Muslims and non-Muslims investors with high capital all over the world.[100] For example, a private firm in Kuala Lumpur issued a *sukuk* as an Islamic financing instrument.[101] Though, the first sovereign *sukuk* was issued by the Bahrain Monetary Authority for liquidity management purposes after which the first global *sukuk* was issued by Malaysia.[102] Its growth as *Shari'ah* compliant in global capital market has been fueled by strong and consistent demand of different countries.[103]

Nigeria as a country has been regarded as world's junk-yard of abandoned projects that worth billions of Naira and it is very unfortunate that a country with potentials in the construction industry faced magnitude of project abandonment.[104] In December, 2021 there was a report that there are 56,000 abandoned projects in Nigeria which confirmed the backwardness of Nigeria.[105] In August, 2021 The Nigerian Institute of Quantity Surveyors, (NIQS), disclosed the fact that there are large numbers of uncompleted projects, which estimated to cost at N12 trillion if Nigeria Government

[95] Ibid
[96] SI Abdullahi (n 8) 219 - 220
[97] Ibid
[98] Ibid
[99] M Safari, S Mohamad and M Ariff,' Sukuk Securities, Their Definitions, Classification and Pricing Issues'https://research.bond.edu.au/en/publications/sukuk-securities-their-definitions-classification-and-pricing-iss accessed 23 February 2024
[100] A Rahman, H Asma and R Markom, 'The Inevitability and Relevancy of Sukuk in Developing Country: A Case of Bangladesh'-SJHSShttps://saudijournals.com/media/articles/SJHSS_611_468477 accessed 14 June 2024
[101]Ibid
[102] M Bennett and Z Iqbal (n 29)
[103] A Rahman, H Asma and R Markom (n 98)
[104] FO Okafor, N N Osadebe and I. J Sylvester, 'Abandoned Projects-implication on the strength of exposed steel and concrete in the Southern region of Nigeria' Nigerian Journal of Technology *NJT* (2028) 37(3) 562
[105] Vanguard Newspaper of 21 December, 2021https://www.vanguardngr.com/2021/12/nigerias-56000-abandoned-projects/amp/ accessed 24 February, 2024

intend to carry them out.[106] It was revealed the President of NIQS further said that one of the factors that lead to abandonment of the projects is corruption as a result of poor cost estimate.[107] The lack of transparency and supervision of public offices allows corruption to cause delay or abandonment of projects.

There is no doubt that *sukuk* structure provides better supervision and transparency thereby reduces abandonment and wastages as the assets must be in operation to generate the proceeds that due to the *sukuk*-holders who invested their capital.[108] With the high level of transparency and efficiency in the *sukuk* structure, the Nigeria Government has been advised to invest into *sukuk* as an alternative to mobilize funds for completing the abandoned projects and improve the infrastructure development of the country as every money expended on the projects will be accounted for.[109]

The *sukuk* structure which is equally a non-interest based-bearing, is the best way for Nigeria to reduce the level of its indebtedness to the foreign loans through the conventional bonds with interest rates.[110] *Sukuk* as instrument is open to all investors irrespective of their faith or belief as same could also be used to finance Nigeria's infrastructure deficits and support economic growth.[111] It is one suitable instrument for financing infrastructural project with less worry because of provision made available for risk management in *sukuk* structure.[112] *Sukuk* instrument in Nigeria embodies two key sustainability features which are infrastructure and financial inclusion as same is considered to be one of the useful products for mobilizing funds. The reason for sustainability attributes of Federal Government of Nigeria *Sukuk* is the dedication of proceeds to tangible road infrastructure projects; financial inclusion for non-interest investors as it is of low risk.[113]

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[106] Ibid
[107] Ibid
[108] IA Abdulkareem, M Mahmud and A Abdulganiyy (n 69) 24
[109] Ibid
[110] JA. Salaudeen, 'Sukuk: Potentials for Infrastructural Development in Nigeria'(2021) 3(7) *Advanced International Journal Banking, Accounting and Finance*https://www.aijbaf.com/PDF/AIJBAF-2021-07-06-09.pdf accessed 24 February 2024
[111] Ibid
[112] Ibid
[113] Newsletter Articles-Nigeria scales up its Sukuk issuance policy and capacities with a debut infrastructure linked issuance by the Federal Capital Territory and an international issuance edging closer (March 21, 2022)https://www.ddcap.com/nigeria-scales-up-its-sukuk-issuance-policy-and-capacities-with-a-debut-infrastructure-linked-issuance-by-the-federal-capital-territory-and-an-international-issuance-edging-closer/ accessed 15 June 2024

In Nigeria, for instance, in 2013, the Osun state government for the first time in Nigeria through it owned Special Purpose Vehicle known as Osun *Sukuk* Company Plc issued the first *sukuk* in Sub-Saharan African to fund the development of the state such as construction of High Schools, Middle Schools and Elementary Schools in Osun State.[114] The said *sukuk* was issued at a rate of 14.75% per annum at N1000 per unit and matured on 2020.[115]

According Mr. Maruf Onike Abdul-azeez, the Chief Missioner of *Nasrul-Lahi-ilFatih* Society of Nigeria, Osun state realized 11.4bn of the proceeds from *Sukuk Ijarah* for bridging of infrastructural deficit in the state, the amount was used to build almost 24 schools after which all *sukuk* holders were given their capital, respectively. Nigeria as a country under which Osun state exists are also in need of *sukuk* to aid the infrastructural development which is of high demand in the country. The Minister of Finance has once opened up that Nigeria, over 30 year ago on its continuous struggle, needs $3trn to fill up the infrastructure gap due to the fact that the population of Nigeria's citizens increase yearly which has already overstretched the available facilities. As an answer to the need of the government to provide good infrastructure in the country, *sukuk* is regarded as one of the best alternative for financing infrastructures. According to the Minister, the level of people's movement from rural areas to urban areas is increasingly occurs every day and this is one of factor that call for more infrastructure projects in the country. Since the fundamental objectives of Islamic finance are profit and loss sharing, the Federal Government Nigeria can raise or mobilize funding through the Islamic instrument of *sukuk*. In 2017, 2018 and 2020 the Federal Government raised N362.6bn for construction and road rehabilitation. It was also reported that private sukuk *Istisna* were used by Lotus capital to raise N1bn for the construction of houses, taking care of transportation and water resources.[116]

According to The Minister of finance, budget and National Planning, Zainab Ahmed disclosed during the national workshop on leveraging the financial markets to achieve double-digital economic growth for Nigeria that the Federal Government of Nigeria by using the Debt

[114] MO Oladunjoye (n 60)
[115] Ibid
[116] During the interview on virtual program called Islamic Finance Weekly with the theme: Sukuk as catalyst for National Development Mr. Maruf Onike Abdul-azeez, Chief Imam Missioner of Nasraul-Lahi-il Fatih Society of Nigeria <https://www.proshareng.com/news/ISLAMIC%20FINANCE/Sukuk-Nigeria-Needs-Standardization-and -Improved-Regulation/58392 accessed on 9 February, 2024

Management Office (DMO) raised N669 billion from the capital market between 2018 and 2020 through three different issuances of *sukuk* bonds. The Government in order to bridge the infrastructural deficit used the financing to construct and rehabilitate more than 44 roads across the six geo-political zones of our country.[117]

Also Mrs. Adaeze Uzor-Kalu while discussing the important of *sukuk* investment suggested that Nigeria need a standardization and stronger regulatory framework for *sukuk* Shariah compliant in capital market debt issues as to enable the fast growth of the *sukuk* fixed income market and make some improvement in its local scale. It is further stated that Nigeria as one of pioneering nations in establishment of Islamic finance regulatory framework in the West African region, is expected to develop a dynamic non- interest bearing finance market in the country by paying serious attention to some areas, namely; the need for government and regulatory incentives to drive participation in the Islamic finance sector, the need for more market issuances, Islamic friendly products, and Islamic commercial papers, the need for more awareness and market education, the need for capital building in the capital market for people, to understand that it is not only for Muslims but all investors and the need to enhance liquidity in the market[118]

The report revealed that Federal government launched the FCT *Sukuk* Technical Committee at the Federal Capital Territory Administration (FCTA) Office in Abuja which was regarded as an important milestone in the journey of the issuance of *Sukuk* in Nigeria which will enhance financing the Federal Capital's infrastructure development.[119]

The Federal government just of recent, in May, 2022 equally approved Three Billion Naira *Sukuk* funds for construction and rehabilitation of the 103 kilometer Numan-Jalingo road in Adamawa and Taraba Highway. According to the Minister of State for Works and Housing, Muazu Sambo,

[117] In national workshop held on August 19, 2021 at the chartered Institute of Stockbroker (CIS)2021 national workshophttps://www.premiumtimesng.com/business/business-news/480196-nigeria-raises-n669-billion-from-sukuk-bonds.html. accessed 10th February, 2024

[118] A Uzor-Kalu, 'Sukuk: Nigeria needs standardization and improved regulationhttps://www.proshareng.com/news/ISLAMIC%20FINANCE/Sukuk-Nigeria-Needs-Standardization-and-Improved-Regulation/58392accessed on 9 February, 2024

[119] Newsletter Articles (n 111)

lack of construction material and funding are responsible for infrastructure deficit in Nigeria, particularly the project in question.[120]

Sustainability dimensions of *sukuk* does not only provide funds for infrastructural growth, it also preserves wealth for productive purposes, offers many commercial opportunities and creates employment in both rural and urban communities and if it is well programmed and regulated, protect the right and maintain the agreement and trust among the parties involved.[121]

1.0 CHALLENGES FACED BY SUKUK ISSUANCE IN NIGERIA:

Despite the fact that the World Bank and Nigerian Banks in issuing *sukuk,* faced different challenges and obstacles, it remains suitable and best alternative source of financing the development of the world.[122] The followings are some of challenges faced by *sukuk* issuance in Nigeria;

1. COMPLEXITY IN STRUCTURE:

Compare to Conventional bonds, *sukuk* structure is more complex as it mostly requires extra efforts in ensuring its compliance with Islamic ethical consideration.[123] The complex structure can easily lead to management risk. According to the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), there are different *Shari'ah* structures in *sukuk* products, and engaging in any of them requires carefulness and expertise.[124]

2. NON-COMPLIANCE WITH *SHARI'AH* AND IMPLEMENTATION OF *SHARI'AH* GOVERNANCE SYSTEM:

The primary purpose of introducing Islamic Capital Market is to ensure the free-interest transactions or use the *sukuk* proceeds on lawful projects.[125] Non-Muslims may find it difficult to comply with the rigorous *Shari'ah* compliance processes all the time.[126]

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[120] News Agency of Nigeria (May 7, 2022)https://gazettengr.com/fg-approves-n3-billion-sukuk-funds-for-numan-jalingo-road-rehabilitation/ accessed 21 May 2024

[121] H Al-Madani, KO Alotaibi and S Alhammadi 'The Role of Sukuk In Achieving Sustainable Development: Evidence From The Islamic Development Bank' http://dx.doi.org/10.21511/bbs accessed 15 January, 2024

[122] M Bennett and Z Iqbal (n 29)

[123] AA Tariq and H Dar, 'Risk of Sukuk Structures: Implications for Resource Mobilization' Thunderbird International Business Review, 49 (2)https://www.isfin.net/sites/isfin.com accessed 10 April, 2025

[124]Sukuk in Emerging East Asia: Trends and Future Challenges https://asianbondsonline.adb.org/documents/> accessed 9 April, 2025

[125] F Omar and M Abdul-Haq, 'Islamic Banking: Theory, Practice and Challenges' (Zed Books, London, 1996) 56

[126] Ibid

The Financial Advisers who are experts and qualified in Islamic finance may in some transactions hold divergent views on any type of *sukuk* structure which may delay the implementation of *Shari'ah* principles on the products.[127]Therefore, in the event of non-compliance with an Islamic financial instrument by any of the parties involved defeats the purpose and automatically invalidates or frustrate the issuance process.[128]

3. LOW LEVEL OF DEMAND AND LACK OF CONFIDENCE IN SUKUK PRODUCTS

The level of exploring the *sukuk* form of financing in Nigeria is low due to unfamiliarity with its benefits.[129] As a result of this many private companies prefer conventional bonds and have more confidence in its product whose benefits had been explored and tasted by many companies before the introduction of *sukuk.*[130]

4. INFLATION AND DEBT RATE

As a result of increment in inflation rate in the country, *sukuk* market may be negatively affected.[131] This may reduce the demand for *sukuk* products and the investors will therefore refrain from investing in various project in high economic risk.[132] The high debt hanging on the neck of the country may be calculated to be a factor that may an economic uncertainty in a society and it may increase risk in *sukuk* market.[133]

5. POLITICAL INSTABILITY:

In Nigeria, many conventional bonds had witnessed and suffered from political instability due to changes in administration that may create geographical or religious tension .[134] This instability has led to insecurity and insurgency in Nigeria which may have negative effects on investment

[127] M Duku and AD Muhammad, 'Challenges of Sukuk Issuance in Nigeria: A Case Study of Osun State Sukuk' International Journal of Innovative Science and Research Technology, 6 (3), 2021, 960
[128] Ibid
[129] A Sunmola and C Okoro (n76)
[130] Ibid
[131] AA Tariq and H Dar (n 121)
[132] B Khanalizadeh, A Rahimzadeh and M Afsharirad (n 87)
[133] Ibid
[134] Ibid

including *sukuk* proceeds.[135] Investors in *sukuk* markets can be discouraged from investing their capitals into investment products in areas where political powers or government are not stable.[136]

From the foregoing discussion, despite these underlying challenges, Islamic banking offers low-risk and more sustainable liquidity, the federal government of Nigeria, despite the various investment channels, embraces the alternative source of funding developmental projects which is so impactful and helpful in mobilizing capital for the abandoned and slow pace of work which so rampant as a result of insufficient budgetary provision.

7.0 CONCLUSION AND RECOMMENDATIONS

Undoubtedly, *sukuk* has been regarded as a sustainable financial vehicle in mobilizing fund to reduce the high level of infrastructural deficit in the global world, and same can be utilized to solve the lack of infrastructural development in Nigeria. Though, the *sukuk* structure is not a new instrument in Nigeria but it has not been solely relied on as the Federal Government still engages in conventional loan bonds. Many countries regardless of religious belief, apply *sukuk* structure as an alternative for infrastructural development in mobilizing huge fund to finance abandoned infrastructure projects.

It is crystal clear that inadequate of infrastructures has deprived Nigeria as a country some benefits, such as economic growth and development. *Sukuk* structure will reduce the rate Nigeria government engage in securing a foreign debt facility with high interest. The global debt market and its shortcomings have called for searching an alternative way of getting funds to provide good infrastructural development both in rural and urban areas.

Sukuk gives many Nigerians an opportunity to invest their capital in Islamic products which is very reliable as against the conventional bonds. For sustainability of this *sukuk* structure this paper recommends the following factors;

[135] Federal Government of Nigeria (FGN) VI 2023 Draft Prospectus

[136] The International Country Risk Guide (ICRG), 2014https://www.prsgroup.com/wp-content/uploads/2014/08/icrgmethodology accessed 10 April, 2025

(9) To ensure the sustainability of *sukuk*, Nigeria government should with supports of Islamic financing experts look for easier methods to be adopted in reducing the complexity in *sukuk* structures.

(10) To achieve proper implementation of available legal frameworks and enhance more compliance with *Shari'ah* dictates, the Financial Regulation Advisory Council of Experts (FRACE) of the Central Bank of Nigeria need to have a harmonized view on Islamic commercial jurisprudence, particular those relate to *sukuk*.

(11) The Central Bank of Nigeria should, in collaboration with other constituted boards for Islamic finance in Nigeria, regularly educate the public and private companies on the advantages of the *sukuk* market to inculcate in them more confidence and bring them closer to it by constant awareness or enlightenment.

(12) To curb inflation which is one of the factors affecting *sukuk* market and other financial markets in Nigeria, the Central Bank of Nigeria should add to its up and doing by providing at its own end a standard measure and guidelines to control monetary policies in the country.

(13) The Federal Government of Nigeria should prevent, by all possible means, any persistent criminal activity, political and religious divisions which may create unrest in the country.

TOWARD AN EFFICIENT DOMESTIC LEGAL FRAMEWORK FOR IMPLEMENTING THE AFCFTA PROTOCOL ON INTELLECTUAL PROPERTY IN NIGERIA

FATIMA BELLO*

Abstract

In 2024, the State Parties to the African Continental Free Trade Area (AfCFTA) Agreement adopted the Protocol on Intellectual Property Rights. It seeks among others, support intra-Africa trade, promote African innovation and creativity and deepen intellectual property culture in Africa, promote coherent intellectual property rights policy in Africa; contribute to the promotion of science, industrialisation, services, investment, digital trade, technology, and technology transfer, and regional value chains; promote a harmonised system of intellectual property protection throughout the continent, support and promote creative and cultural industries, contribute to access to knowledge; and support public health needs and priorities of State Parties. The creative and tourism industries are ready to contribute and estimated $100 billion and over 2 million jobs to the Nigerian economy, this is in addition to potential contributions of non-technological and technological innovations to the economy. If strategically aligned, intellectual property rights protection can foster innovation, expand production and increase the contribution of these industries and innovation to the Nigerian economy while increasing Nigeria's share of the AfCFTA market. Adopting a doctrinal approach, this paper reviews the AfCFTA Protocol on Intellectual Property Rights, analyses the legal framework within which the AfCFTA Agreement will be applied in Nigeria, identifies gaps that could impede implementation, and recommends options for alignment.

Keywords: *AfCFTA, Intellectual Property, innovation, creative industries, plant varieties, emerging technologies, genetic resources*

(h) INTRODUCTION

The AfCFTA Agreement, hailed as a ground-breaking agreement has the tripartite objectives of promoting intra-African trade, stimulating industrialisation by advancing trade in value added

production, and fostering inclusive and sustainable growth and development across the continent. It creates possibly the largest single market in the world of about 1.3 billion people, with a combined Gross Domestic Product (GDP) of approximately $3.4 trillion.[1] It has the potential to lift 30 million people out of extreme poverty, and can boost income in Africa by $450 billion by 2035- representing a gain of around 7% [2] However, realising the innumerable potentials of the agreement hinges on practical implementation at continental, regional, and national levels. Implementation at the national level requires aligning the domestic legal framework with the agreement. For Nigeria as a state party, this includes aligning our laws, policies, and regulations with the Agreement.

Regarding the Protocol on Intellectual Property Rights, implementation will require an enabling domestic legal framework that will support its alignment with domestic legal instruments in Nigeria. It is against this backdrop that this paper analyses the domestic legal implementation framework to determine its suitability and preparedness to align the Protocol with our national laws. It also bears in mind the fragmented nature of Nigeria's legislations covering intellectual property, this review contextually reviews the instruments to support coherent analysis of the legal framework. The paper identified some implementation gaps that will require closing to ensure the creation of the enabling implementation framework and make recommendations on how to close these gaps.

Following this introductory section, section 2 gives an overview of the protocol on intellectual property rights. Section 3 analysis the legal framework for implementing the Protocol, section four did some benchmarking while section five made some observations and recommendations on the way forward.

(i) THE AFCFTA PROTOCOL ON INTELLECTUAL PROPERTY RIGHTS

The AfCFTA Protocol on Intellectual Property Rights has 7 parts and 42 Articles. PART 1 covers definitions, objectives, and scope; PART II covers principles; PART III covers standards on

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[1]. AfCFTA, Overview, <https://au-afcfta.org/about/> accessed 13 March 2025.

[2] Ibid

intellectual property rights; PART IV covers cooperation on intellectual property rights; PART V covers enforcement of intellectual property rights; PART VI covers institutional arrangements; PART VII covers final provisions. The Protocol applies to the entire spectrum of intellectual property covering protection for plant variety protection,[3] which shall be done via a unique system of rules on farmers' rights, plant breeders' rights, as well as rules governing access to, and benefit sharing;[4] geographical indications, marks,[5] through additional legal protection such as certification marks, collective marks, or unfair competition laws;[6] patents,[7] through grants for inventions,[8] removal of barriers to access to medicines, vaccines, diagnostics, therapeutics, healthcare essential inputs, ingredients and processes and essential tools from national patent laws;[9]

Establishing procedures to enable export of pharmaceutical products under compulsory license,[10] provide exceptions to the patents rights to allow research, experimentation, and testing access information about the subject matter of a patented invention,[11]exception for development related and regulatory review use,[12] to permit acts done on a subject matter of patent solely for uses related to the development and submission of information for regulatory review purposes required under any law of the State Party or any other country that regulates the making, use, sale or import of the product; and encourage the protection of environmentally friendly innovations;[13] utility models,[14]through the provision of exceptions and limitations to the rights conferred by a utility model;[15]industrial designs,[16] requirement for state parties to protect new and original industrial designs,[17]encourage protection of designs that contribute to the development of industries and value chains,[18]encourage registration of environmentally friendly industrial designs,[19] provision

[3] Article 3, Protocol on Intellectual Property Rights (PIPR)
[4] Article 8(1), PIPR
[5] Article 3, PIPR
[6] Article 9, PIPR
[7] Article 3, PIPR
[8] Article 12(1), PIPR
[9] Article 12(3)(a), PIPR
[10] Article 12(3)(b) PIPR
[11] Article 12(3)(d) PIPR
[12] Article 12(3)(e), PIPR
[13] Article 12(3)(f), PIPR
[14] Article3, PIPR
[15] Article 13(2), PIPR
[16] Article 3, PIPR
[17] Article 14(1)(a), PIPR
[18] Article 14(1)(b), PIPR
[19] Article 14(1)(c), PIPR

of protection through copyrights or patents,[20] ability to provide exceptions and limitations to rights conferred by industrial designs;[21]undisclosed information including trade secrets, layout designs (topographies) of integrated circuits,[22] provided the information is a secret,[23] has commercial value,[24] and reasonable steps have been taken to keep it a secret,[25]allows states to provide exceptions and limitations to this rights;[26] copyright and related rights,[27] through a balanced copyright and related rights framework that considers rapid technological developments and their disruptive and transformational nature on traditional models of production, dissemination, and use of copyrighted works, fair and adequate remuneration for authors and performers and facilitation of cross-border flows of educational and cultural materials,[28] ability of States to provide exceptions and limitations to the rights,[29] ability to provide exemptions and limitations for educational and research purposes,[30] and ability to provide exemptions and limitations to support cultural heritage;[31]

Traditional knowledge, [32] by requiring applicants for this category of rights to provide source of the traditional knowledge,[33] proof of free and prior informed consent,[34] proof of fair and equitable benefit under relevant national law,[35] by taking measures to prevent and prohibit unauthorised utilisation of the traditional knowledge,[36] and by consulting relevant African and International instruments in developing governing rules;[37] traditional cultural expressions,[38]by requiring applicants to provide source of cultural expression or folklore, [39] proof of prior informed consent,

[20] Article 14(2) PIPR
[21] Article 14(3), PIPR
[22] Article 3, PIPR
[23] Article 15(1)(a) PIPR
[24] Article 15(1)(b) PIPR
[25] Article 15(1)(c) PIPR
[26] Article 15(2) PIPR
[27] Article 3, PIPR
[28] Article 11(2)(a)-(c), PIPR
[29] Article 11(3), PIPR
[30] Article 11(4), PIPR
[31] Article 11(5), PIPR
[32] Article 3, PIPR
[33] Article 18(2)(a), PIPR
[34] Article 18(2)(b), PIPR
[35] Article 18(2)(c), PIPR
[36] Article 18(3), PIPR
[37] Article 18(4), PIPR
[38] Article 3, PIPR
[39] Article 19(2)(a), PIPR

and proof of fair and equitable benefit sharing under relevant national regine,[40] requirement for States to take steps to prevent and prohibit unauthorised utilisation, and requirement to consult African and International instruments to develop governing rules;[41] Genetic resources,[42] by requiring applicants to provide information on source, proof of prior consent, and proof of equitable benefit sharing,[43] and taking steps to prevent unauthorised utilisation,[44] by States protect emerging technologies through existing categories of intellectual property rights or unique systems, adopting measures to promote access to new and emerging technologies, by supporting and encouraging the use of emerging technologies to enable industrialisation and value chains development, and promoting environmentally friendly use of emerging technologies and other emerging issues.[45]

Article 7(1) however considers such intellectual property rights described above to be exhaustive where a property that enjoys intellectual rights protection is made available to the AfCFTA market either by the owner of the right, or by someone else with the consent of the owner. Pursuant to Article 7(2), conditions applicable to exhaustion of rights shall be described in the applicable annexes to the protocol which will be discussed further in subsequent part of this paper.

At the continental level for purposes of harmonisation and ensuring common rules, the protocol identified areas for collaboration to include information sharing,[46] identifying future issues that may require common rules,[47] the use of open-source licensing, research cooperation, and other collaborative models,[48] strengthening the means for securing fair share of the proceeds from adaptation, distribution, rental, communication, and other commercial use of work,[49] enhance the use of geographical indications, collective marks, and certification marks, traditional knowledge and genetic resources to enhance value addition on commercialisation of natural, agricultural,

[40] Article 19(2)(b)-(c), PIPR
[41] Article 19(3)-(4), PIPR
[42] Article 3, PIPR
[43] Article 20(1)(a)-(c), PIPR
[44] Article 20(2), PIPR
[45] Article 17(1)(a)-(d), PIPR
[46] Article 23(a), PIPR
[47] Article 23(b), PIPR
[48] Article 23(c), PIPR
[49] Article 23(d), PIPR

craft, industrial products, and other traditional cultural expressions,[50] facilitate the use of flexibilities under international instruments for the protection of public health, food security, agriculture, and nutrition,[51] creation of mechanisms for collaboration among customs officials, judicial authorities, and other law enforcement agencies to resolve disputes relating to infringement of intellectual property rights, and the provision of technical assistance for investigation,[52] initiate and undertake studies on intellectual property protection and enforcement-related issues,[53] promote public awareness intellectual property rights,[54] and facilitate registration of intellectual property rights on the continent.[55]

The Protocol also made provision for the administration of intellectual property rights through automation and streamlining of intra-agency communication,[56] exchange of experience on registrable rights,[57] capacity building for intellectual property office to support technology transfer,[58] and support human resource development on intellectual property.[59] Also included in the protocol are provisions relating to enforcement of intellectual property rights which require States to provide holders of intellectual property rights access to legal mechanisms for enforcement of such rights,[60] consider balancing between the rights of holders and interest of consumers in devising enforcement procedures,[61] and the procedure should also consider the administrative, technological and financial capacity of State parties.[62]

Responsibilities have also been imposed on State Parties to enforce according to the Protocol, national law, and other treaty obligations, to build the capacity of representative organisations of intellectual property, build the capacity of rights holder's representative organisations, provide legal framework for dispute resolution through alternative dispute resolution (ADR), investigate

[50] Article 23(e), PIPR
[51] Article 23(f), PIPR
[52] Article 23(g), PIPR
[53] Article 23(h), PIPR
[54] Article 23(i), PIPR
[55] Article 23(j), PIPR
[56] Article 24(a), PIPR
[57] Article 24(b), PIPR
[58] Article 24(c), PIPR
[59] Article 24(d), PIPR
[60] Article 25(1), PIPR
[61] Article 25(2), PIPR
[62] Article 25(3), PIPR

and prosecute wilful trademark counterfeiting, copyright piracy crimes at a commercial scale including, unlawful disclosure or acquisition of trade secrets both in the physical and digital spaces, and develop and maintain accessible database of registered intellectual property rights and procedures.[63] The protocol interestingly provides judicial measures to protect and preserve the rights of holders. Article 27 requires State Parties to provide access to judicial injunction in disputes involving the infringement of intellectual property rights.

(j) LEGAL FRAMEWORK FOR INTELLECTUAL PROPERTY RIGHTS IN NIGERIA

The legal framework for intellectual property rights in Nigeria comprises the Copyright Act, 2022; Trademarks Act, Chapter T13 Laws of the Federation of Nigeria 2004; Trademark Malpractices (Miscellaneous Offences) Act, CAP T12 LFN, 2004; The Merchandise Marks Act, Cap M10 LFN,2004; Patents and Designs Act, and Chapter P2 Laws of the Federation of Nigeria 2004, and the Plant Variety Protection ACT, 2021,.

3.1 COPYRIGHT ACT, 2022:

Copyright Act (CRsA),2022 replaced the Copy Rights Act Chapter (Cap) C28 Laws of the Federation of Nigeria (LFN) 2004 and provides for the regulation, protection, and administration of copyrights and related matters in Nigeria.[64] In line with international practice, it was enacted to protect the rights of authors, ensure they get just rewards and recognition for their work, ensure compliance with international copyrights treaties and conventions, and enhance the regulatory capacity of the Nigerian Copyrights Commission, among others.[65] The creative works that are eligible for copyrights protection in Nigeria are literary works, musical works, artistic works, audio visual works, sound recordings, and broadcasts.[66] It however qualifies the literary, musical and artistic works that shall be eligible for protection by stating that the protection will be granted to these categories of works provided the authors expend efforts to give the work an original character and fixed in any medium of expression where it can be perceived, reproduced or communicated

[63] Article 26(1)-(5), PIPR
[64] CRsA, https://placng.org/i/wp-content/uploads/2023/04/Copyright-Act-2022.pdf
[65] S.1(a)-(d), CRsA
[66] S.2(1)(a)-(f), CRsA

directly or through a machine or device. Also excluded from protection are works which are intended as industrial designs at the time they made.[67]

The Act also excludes ideas, procedures, processes, formats, systems, methods of operation, concepts, principles, discoveries or mere data; official texts of a legislative or administrative nature; and official state symbols and insignia, including flags, coat-of-arms, anthems, and banknote designs.[68] It eliminates the need for formality,[69] and confers eligibility on works with joint authorship where the work or substantial part of it is made by a Nigerian including juristic persons.[70] The Act confers exclusive right to reproduce, publish or perform the work in public, do same for any translation of the work, make any audiovisual work or a record of it, and distribute same to the public, for commercial purposes through sale or other transfer of ownership subject to meeting specified criteria, broadcast and communicate the work to the public, by wire or wireless means thereby making it accessible to the public, make any adaptation of the work, its translation, or any part thereof.[71]

The Act also defines the nature and scope of rights for all the categories of rights described therein. Also covered is the duration of protection conferred by the Copy Rights Act.[72] Part II covers exceptions to copyrights, also covered in Part III are issues of ownership, transfers, and licences. On infringement, Part IV clearly defines what amounts to infringement and its legal consequences and copyright offences. Also covered are anti-piracy measures, performance rights, folklore, establishment of an institutional framework to regulate and administer the rights including the powers to make regulations. Overall, the Act, as anticipated by the protocol provides rights, limitations and exemptions, and other mechanisms to protect the copyrights of authors.

3.2 TRADEMARKS ACT CAP T13 LFN 2004:

The TradeMark Act 2004 replaced the Trademarks Act (TMA) No. 29 of1965 which was repealed. Registration of proprietary rights confers exclusive rights to use of trade mark connected to

[67] S.2(6), CRsA
[68] S,3(a)-(e), CRsA
[69] S,4, CRsA
[70] S,5, CRsA
[71] S,9, CRsA
[72] S,19, CRsA

goods.[73] Such rights will be deemed infringed where a person, other than the proprietor uses the mark in the way it is permitted to be used, or uses a mark identical to the registered one or one closely resembling it so much so that it could likely cause deception or confusion, or gives the impression that it is a trade mark, or as importing a reference to some person having the right either as proprietor or as registered user.[74] The Act also subjects the rights issued upon registration to some limitations.[75] This applies to registration under part A of the Act.

Regarding registration under Part B, registration confers similar rights as those conferred by registration under Part A.[76] it also defined the criteria for registrability and conditions for validity of registration.[77] It prohibits deceptive and scandalous matters, names of chemical substances from being registrable, identical and resembling trademarks.[78] Also provided in the Act are the procedure, duration of registration, opposition to registration, procedure for challenging registration, appeal procedure, assignment and transmission, association of trademarks, removal from register, and use of trademarks in regarding goods for export. Also covered are rectification and correction of register, certification of trademarks, international arrangements, and powers to make regulations.

a. **MALPRACTICES (MISCELLANEOUS OFFENCES) ACT, CAP T12 LFN, 2004:**

This Act applies generally to trade malpractices. It creates certain offences relating to trade malpractices including false and misleading labels, packages, sells, offers for sale or advertisements that could be false, misleading and designed to create an incorrect impression about the quality, character, brand name, value, composition, merit or safety of a product.[79] It generally also covers the false and misleading use of weights and measures for commercial purposes and defines offences related therewith. it also makes it an offence to expose, offer for sale through misrepresentation or omission that is calculated to, or likely to as to its weight or measure or quantity to be sold or offered for sale.[80]

[73] S.5(1), TMA
[74] S.5(2), TMA
[75] S.5(3), TMA
[76] S.6(1), TMA
[77] S.9, TMA
[78] S.11-13, TMA
[79] S.1 (a), Trade Malpractices (Miscellaneous Offences) Act (TMMOA)
[80] S.1 (g), TMMOA

b. **MERCHANDISE MARKS ACT, CAP M10 LFN,2004:**

The Act seeks to protect goods that have

been conferred with trademark, privilege or copyright protection from false trade description. It defines false description as

> *"a trade description which is false or misleading in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false or misleading in a material respect; and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act".*

It applies to trade description covering number, quantity, measure, gauge, or weight of goods, standard of quality, fitness for purpose, strength, performance or behaviour, the place or country of production, mode of manufacturing or production, composition of material, or as to goods being under patent, privilege or copyright protection.[81] The description also extends to the use of figure, word, or mark which in its common usage of trade is understood to be an indication of any of the above description.

It defines offences relating to trademarks and trade description to include forgery of trademarks, applying marks closely resembling a trademark with the intention to deceive, being in possession or making a die block machine or an instrument to forge a trademark. It is worth noting here that persons employed to make such instruments in the normal course of their business are exempted from liability for this category of offence, false description, or causes any of the described actions in this paragraph to be done.[82] However, a person will not be guilty of an offence where lack of intention to defraud, reasonable precautions against committing an offence, no reason to suspect the genuine nature of the trademark or trade description, is established.[83] The Act explained the consequences of being found guilty of an offence, described in detail what amounts to the offences

[81] S.2(1): trade description, (a)-(g), Merchandise Marks (MA)Act, Cap M10, LFN, 2004
[82] S.3(1)-(e), MA
[83] S.3(2)(a)-(b), MA

described above. Overall, it further strengthens enforcement and protection of trademarks, patent and copyrights in Nigeria.

3.5 PATENTS AND DESIGNS ACT, CHAPTER P2 LAWS OF THE FEDERATION OF NIGERIA 2004:

Provides a legal framework for the registration and acquisition of proprietorship of patents and designs in Nigeria. it defines patentable inventions to include new inventions resulting from inventive activity and capable of industrial application, or new improvement on a patented invention.[84] It defines new inventions to mean inventions that do not form part of the state of the art, result from inventive activities not obviously flowing from the state of the art, being capable of industrial application if capable of being used in industry if capable of being manufactured.[85] The Act however excludes plant or animal varieties, the biological processes of their production, or inventions whose publication or exploitation will be considered contrary to public order or morality as a result of them being prohibited by law,[86] and principles and discoveries that are scientific in nature.[87] S.2(1) vests patent rights in the statutory inventor, meaning the first person to file for patent, or who justifiably claim foreign priority for patent application regarding a new invention.[88]

The Act further entitles the true inventor to be named in a patent irrespective of such a person being the statutory inventor.[89] Interestingly, where a patent is applied for or obtained a patent without the consent of an inventor, the said patent shall be considered transferred to the inventor or the inventor's successor.[90] The Act clearly sets out the procedure for applying for patent and highlights the approval process. It defines the rights conferred by the issuance of a patent to include the preclusion of others from importing, selling or using the product, or stocking a product where the patent applies to goods, or applying a process to obtain a product where the patent is applicable to a process.[91] Such rights are limited to acts concerning industrial and commercial purposes and

[84] S.1(1)(a)-(b), Patents and Designs Act (PDA)
[85] S.1(2)(a)-(b), PDA
[86] S.1(4)(a)-(b), PDA
[87] S.1(5), PDA
[88] S.2(1), PDA
[89] S.2(2), PDA
[90] S.3, PDA
[91] S.6(1)(a)(b), PDA

does not extend to acts concerning a patented product that is lawfully sold in Nigeria.[92] duration and lapse of patent, the time frame for expiration or lapse of a patent have also been provided for in the Act.

Regarding designs, S.12 defined industrial design to mean "Any combination of lines or colours or both, and any three-dimensional form, whether or not associated with colours…," where it is intended for use as a model or pattern that yields technical results through multiplication. In this regard, the Act defines registrable designs to include new designs that are not contrary to public order or morality.[93] Also covered are rights to registration by statutory inventor, and detailed provisions on the registration process. Upon registration, the owner has the right to preclude others from reproducing the design, importing, selling or utilising same for commercial purposes, or holding it for utilisation for commercial purpose.[94] It defines infringement of industrial and design rights as situations where a person does or causes, an act that act which such a person has been prohibited from doing without licence from the owner of a patent. [95] Also covered are provisions for legal proceedings, and foreign priority.

3.6 PLANT VARIETY PROTECTION ACT, 2021:

This Act seeks to protect plant varieties, encourage investment in plant breeding and crop variety development, establish a protection office as the institutional framework which shall promote increased productivity for stable crops targeting smallholders. Its objectives include the promotion of increased productivity in staple crop production, increased mutual accountability in the seed sector, and the protection of new plant varieties.[96] It applies to breeder; and[97] plant genera and species. In terms of administration and regulation, the Act will be administered by the Plant Variety Protection Office,[98] whose functions include granting of breeder's rights, maintenance of register,

[92] S.6(3)(a)-(b), PDA
[93] S.13(1)(a)-(b), PDA
[94] S.19(1)(a)-(b), PDA
[95] S.25(1), PDA
[96] S.1(1)(a)-(c), Plant Variety Protection Act (PVPA)
[97] S.1(2(a)-(b), PVPA
[98] S.3, PVPA

provision of information on breeder's rights, and facilitation of licensing, transfer of breeder's rights, and collaboration with local and international bodies among others [99]

The protection conferred by this Act applies to all general and species of plants,[100] and will be granted for new, distinct, uniform and stable variety; the variety is designated by a denomination as provided in the Act, and upon compliance with the requirement to pay prescribed fees.[101] It defines the criteria for designating a variety as new to include a variety that has not been sold to anyone or has not been disposed of for purposes of exploitation with the consent of the breeder earlier than one year before application, four years outside the territory of Nigeria, and six years for trees and vines. It also provides procedure for application for Plant Variety Protection Rights.[102] The application shall be considered and disposed of in accordance with Part V of the Act.

Upon conferment of the protection, the breeder becomes entitled to equitable remuneration from authorisation for use by others.[103] Such authorisation can be issued for production or reproduction, conditioning for propagation, offering for sale, export, import, and stocking.[104] The Act provides limitations and exceptions to a breeder's rights. The rights do not cover varieties that are for private and for non-commercial purposes, or those that are for experimental purposes among others.[105] Provisions also exist regarding nullity, cancellation, and surrender of breeder's rights,[106] and procedure for appeal against the decision taken pursuant to the act are also highlighted.[107]

Also covered are provisions concerning the establishment of a development fund designed to utilise funds generated from this Act for the development and promotion, training of plant breeders on their rights, the establishment and maintenance of variety collection and database and activity relating to the administration of the Act.[108] Part X addresses offences and penalties. Offences are defined to include making false entry into the register of breeders, falsifying a copy of an entry in the register or a submitted document, producing or tendering false entry of copy as evidence,

[99] S.5(a)-(e), PVPA
[100] S.12, PVPA
[101] S.13((1) &(2)(a)-(b), PVPA
[102] Part IV, PVPA
[103] S.28, PVPA
[104] S.29(1)(a)-(g), PVPA
[105] S.30(1)(a)-(c), PVPA
[106] See Part VII, PVPA
[107] See Part VIII, PVPA
[108][108] S.44, and see generally Part IX, PVPA

submitting false documents, making false statements or representation to the Registrar, obstructing or hindering the Registrar carrying out of his functions, failing to appear at any proceedings under the Act, refusal to be sworn as a witness in a proceeding, produce document or answer questions, contravening obligation to use denomination, gives false information or make false statement in any application, and violating breeders right, among others.[109] Also covered is international collaboration and cooperation with provision empowering the minister to enter into agreements with foreign states, inter-governmental or non-governmental organisation to facilitate cooperation in testing.[110]

4. BENCHMARKING THE LEGAL FRAMEWORK WITH THE PROTOCOL

Having reviewed the AfCFTA Protocol on Intellectual Property Rights and the legal framework for implementation in Nigeria, this section analysis the legal framework alongside some key expectations of the Protocol.

4.1 IMPLEMENTING LAWS: As mentioned earlier, Part III of the protocol deals with Standards on Intellectual Property Rights and requires state parties to provide protection for New Plant Varieties, Geographical Indications, Marks, Copyright and Related Rights, Patents, Utility Models, Industrial Designs, Protection of Undisclosed Information, Layout Designs (Topographies) of Integrated Circuits, Emerging Technologies, Traditional Knowledge, Traditional Cultural Expressions and Folklore, and Genetic Resource

Article 8 requires State Parties to protect New Plant Varieties through a unique system that includes farmers' rights, plant breeders' rights, and rules on access and benefit sharing, as appropriate. At the domestic level, this is covered by the Plant Variety Protection Act 2021. It defines the scope and procedure for conferment of protection accordingly. This protection is given in addition to other measures put in place in compliance with obligations under various international treaties and conventions.

Article 9 Geographical Indications requires State Parties to protect geographical indications through a unique system. It further requires states to provide additional legal means including

[109] S.47(1)(a)-(l), PVPA
[110] S.52, PVPA

certification marks, collective marks, or unfair competition laws to provide these additional protections. S.43 of the TradeMarks Act provides additional protection through certification trademarks. Although the Act does not provide for unfair competition, the Federal Competition and Consumer Protection (FCCP) Act 2018 provides protection against unfair business practices as it seeks to promote and maintain competitive markets in Nigeria.[111]

Article 10 requires State Parties to provide for the protection for all categories of Marks and encourage protection that promotes sustainable industrial development through diversification and regional value chain development; and encourage registration for environmentally friendly goods and services. Although the Trademarks Act provides protection for marks,[112] it does not readily incorporate sustainability and environmental considerations. Therefore, the framework created by the Climate Change Act 2021 and other sectoral laws can be deployed to extend the protection to sustainability and environmentally considered marks.

Article 11 requires State Parties to provide for the protection for Copyright and Related Rights. Under the domestic legal framework, this is covered by the copyrights Act 2021 which aligns with Article 11(2)(a)-(c) of the Protocol. Article 12 requires State Parties to provide for the protection for Patents. This is covered under the domestic framework by the Patent and Designs Act. Although the Act covers some elements of technology, more need to be does not expand its scope to adapt to current technological developments. Article 13 requires State Parties to provide for the protection for Utility Models. Under the domestic legal framework, this is not covered by the Patents and Designs Act but has been provisionally provided for by a government Circular in 2021.[113]

Article 14 requires State Parties to provide for the protection for Industrial Designs. This is covered under the domestic legal framework by the Patent and Designs Act. Article 15 requires State Parties to provide for the protection of Undisclosed Information. The Trademarks Act require the registry to secure information provided by an applicant and protect the disclosure of such information to

[111] S.1, Federal Competition and Consumer Protection Act, 2018.
[112] See S.43(10), which provides that the provision of the First Schedule of the Act applies to registration of a mark, or registered marks, and the definition of Trademarks in S. 67, consequently, the Act applies to Marks.
[113] European Commission, IP Country Fiche: Nigeria, https://intellectual-property-helpdesk.ec.europa.eu/system/files/2022-02/IP-Country-Fiche_NIGERIA.pdf

rivals. Article 16 requires State Parties to provide for the protection of Layout Designs (Topographies) of Integrated Circuits. These are protected under the domestic legal framework by the Patents and Design Act. Article 17 requires State Parties to provide for the protection Emerging Technologies. These are currently protected under the domestic legal framework by the instruments mentioned here. However, other sectoral and general laws can be deployed to develop a protective law for such technologies. Article 18 requires State Parties to provide protection for Traditional Knowledge, and Article 19 require protection for Traditional Cultural Expressions and Folklore, these are currently protected under the copyrights Act and TradeMarks Act respectively.

Article 20 requires State Parties to provide protection for Genetic Resources. Although under the domestic legal framework, there is no specific law enacted by the National Assembly in this regard, genetic resources are protected by the National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations, 2009. Part II of the regulation covers access to genetic resources, while Part III covers benefit sharing. In this regulation, clause 25 defines genetic resources as *"genetic materials of actual or potential value"*. It further defines genetic materials as "any genetic material of plant, animal, microbial or other origin containing functional units of heredity". The second schedule contains guidelines on form and contents of prior informed consent (PIC). Item 4 of the PIC entitled 'Benefit' requires the applicant to provide information on the kind of benefits that will result from the acquisition of access to such genetic material, importantly, applicant is also required to specify the benefit-sharing arrangements (both monetary and non-monetary) benefits arising from the access to genetic resources.

In addition to the above, intellectual property rights protection is also impacted by some general and sectoral laws such as the Companies and Allied Matters Act (CAMA) 2020,[114] the National Office for Technology Acquisition and Promotion (NOTAP) Act,[115] National Agency for Food and Drug Administration and Control (NAFDAC) Act,[116] Federal Competition and Consumer

[114] Which repealed the CAMA, Cap C20, LFN 2004.
[115] Cap N62, LFN 2004
[116] Cap N1, LFN 2004

Protection Commission Act, Cybercrimes (Prohibition, Prevention, etc.)(Amendment) Act 2024,[117] and Standards Organization of Nigeria (SON) Act 2015,[118] among others

4.2 BENEFIT-SHARING: The Article of the protocol highlighted in 4.1 above require applicants for the various rights protection to provide proof of equitable benefit sharing within the domestic legal framework. This implies that applicants are required to demonstrate, compliance with the benefit-sharing provisions of the applicable national law. For instance, National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations, 2009 provide benefit-sharing procedure and a form for PIC to guide applicants in complying with the requirements of the regulation. It should be highlighted here that the key legal instruments described in 4.1 contain benefit-sharing requirement provisions. This aligns with the expectations and requirements of the Protocol.

4.3 COOPERATION: the protocol envisages cooperation with other state parties. The relevant instrument in 4.1 above also anticipate and encourage such cooperation to ensure efficient implementation.

4.4 COMPLIANCE WITH INTERNATIONAL TREATIES: the protocol envisages its implementation by State Parties to be done alongside implementation and compliance with other related international treaties. The instruments reviewed in 4.1 also makes room for compliance with international obligations under other treaties. Furthermore, Nigeria is a party to several intellectual property rights treaties which include Beijing Treaty on Audiovisual Performances, Berne Convention for the Protection of Literary and Artistic Works, Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, Paris Convention for the Protection of Industrial Property, Patent Cooperation Treaty (PCT), Patent Law Treaty (PLT), Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, WIPO Copyright Treaty (WCT), WIPO Performances and Phonograms Treaty (WPPT). These instruments are administered alongside the national instruments developed to address intellectual property.

[117] Which repealed the Cybercrimes (Prohibition, Prevention, etc.) Act No. 17 2015
[118] Which repealed the SON Act Cap S9, LFN 2004

5. CONCLUSIONAND RECOMMENDATIONS

The above review and analysis indicate that Nigeria has a domestic legal framework for the implementation of the AfCFTA Protocol on Intellectual Property Rights Protection. Having said that, there are some observations which have been made about the framework, and which if addressed, could strengthen and make the intellectual property rights protection ecosystem more effective. .Below are a few recommendations worthy of mention:

5.1 OBSERVATIONS:

1. A number of laws governing intellectual property rights protection in Nigeria are d and may not be suitable for addressing some contemporary developments. For instances, the Trade Marks Act is a 1965 legislation, the Patents Act is a 1970 legislation, and the National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations is a 2009 regulation. While they provide protection, the extent to which they can address modern challenges is debatable.
2. Article 9 of the protocol requires states to provide additional protection against unfair competition. There is no provision in the TradeMarks Act providing such protection, although the FCCP Act provides some protection.
3. Article 10 encourages registration for environmentally friendly goods and services. However, the TradeMarks Act does not readily incorporate sustainability and environmental considerations.
4. Article 17 requires State Parties to provide for the protection for emerging technologies. The Patent Act covers some elements of technology.
5. Article 13 requires State Parties to provide for the protection for Utility Models as envisaged by Article 13 of the Protocol is not covered by the Patents and Designs Act, provisionally by a government Circular in 2021.[119]

[119] European Commission, IP Country Fiche: Nigeria, https://intellectual-property-helpdesk.ec.europa.eu/system/files/2022-02/IP-Country-Fiche_NIGERIA.pdf

6. On the requirement to protect undisclosed information in Article 15, the provision in providing this protection in the Trade Marks Act appears to be limited.
7. As noted earlier, genetic resources are protected by a regulation, the National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations. Furthermore, it is a 2009 instrument.

5.2 RECOMMENDATIONS:

1. There is a need to review obsolete intellectual property rights laws to either amend or

   repeal them, bringing them at par with latest development in intellectual property rights protection.
2. There is a need to review the mechanism for protection against unfair protection and develop a more responsive mechanism that aligns with the AfCFTA and other international obligations.
3. The framework created by the Climate Change Act 2021 and other sectoral laws can be deployed or adapted to extend the protection to sustainability and environmentally considered marks.
4. there is need to develop a robust framework for protecting emerging technologies either by updating the Patent Act or enact a new law to be administered alongside the Patent Act if need be. This could be done by adapting and deploying other sectoral and general laws to develop such protective mechanism.
5. protection for Utility Models as envisaged by Article 13 should be incorporated into the Patents and Designs Act through amendment.
6. The provisions of the Trade Marks Act regarding securing information provided by applicant should be reviewed and updated to adequately cover undisclosed information as envisaged by Article 15 of the protocol.
7. On the protection of genetic resources, as a way of strengthening the protection mechanism, the provisions of this regulation could be incorporated into a law which serve the purpose of both and updating the protection mechanism.

iv. CONCLUDING REMARKS

A key factor for the successful implementation of the AfCFTA Protocol on Intellectual Property is having an enabling legal framework in State Parties. This will help align the agreement with domestic implementation laws. Upon review of the protocol, this paper analysed the domestic legal framework for implementation of the protocol in Nigeria. It found that a domestic implementation framework comprising domestic and international instruments exists. However, some gaps have been identified that could prevent the protocol from realising its full potentials through effective alignment. To address that this paper made various recommendations on how to address the gaps. Addressing these gaps and implementing annexes to the protocol with provide an efficient protection mechanism. Presently, draft annexes on Copyright and related Rights, Industrial Designs, the AfCFTA Intellectual Property Office, Marks, Traditional Knowledge, Traditional Cultural Expression, Genetic Resources, New Plant Varieties, Utility Models, Patents, and Geographical Indications are being reviewed. Once adopted, it will further enhance domestic implementation of the Protocol. As we await the completion of the review process, Nigeria should place itself in the best position to leverage the protocol by enhancing its domestic legal framework.

THE DOCTRINE OF ADVERSE POSSESSION IN MODERN PROPERTY LAW: A REASSESSMENT

Issa Akanji Adedokun*

Abstract

Adverse possession is a legal doctrine that permits a trespasser to acquire title to land by continually occupying it for a prolonged period, usually twelve years, without the authorisation of the land owner. This doctrine occurs when a stranger takes over land he does not own. This situation of possession can happen intentionally or unintentionally, with a squatter or trespasser occupying the land, such as when someone unknowingly encroaches on the land of his neighbour. This doctrine has become rooted in the property law of many jurisdictions. Still, modern intricacies are challenging this age-long rule in a bid to balance the competing interests of adverse possessors and true owners. Against this background, this paper examines the theoretical underpinnings of adverse possession, the evolution of the doctrine through case law and statutory limitations, and the modern challenges and criticism of adverse possession. It renders policy reforms as recommendations for the modification of the doctrine or total expulsion from the realm of modern property law. The paper accentuates the contemporary realities of absentee landlords or land owners and as part of its findings, contends that the social policy considerations of adverse possession are contrary to fairness and justice and tantamount to enabling land grabbing. The article recommends the remedy of compensation for the landowner or abolition of title to land through adverse possession as done in Singapore.

Keywords: Adverse Possession; Landowner; Absentee Landlord; Title to Land; Property law.

Introduction

Title to land is the fountain of all rights that accrue to landowners and it is the crux of ownership and possession in property law. Property law has gone through different evolutions from the 9th-century feudal system of mediaeval Europe, where peasantry was a norm, and landowners were the alpha and omega of their land or estates, to a period where serfdom was decimated, and the

rights to land ownership became accessible to peasants.[1] The thrust of economic activities from the 15th to the 20th century was land, as the people were largely agrarian and pastoralists.[2] The land had diverse functions: it served as an emblem of nobility in traditional African societies and was a system of preserving age-long social structures and caste systems, while the volume and quality of land, to some extent, determined the economic fortunes of a particular family.[3] A family with a larger volume of arable land will be able to produce more food and gain increased respect among the other clans in traditional African societies like the Igbo, Tiv, Yoruba, et cetera.[4]

Land ownership transcends agricultural produce and status symbols; it is the foundation of many prosperous families and countries today that are blessed with enormous mineral deposits and natural deposits. In the United States of America,[5] the qualified and absolute ownership theory of land ownership significantly determines the financial fortunes of individuals and families. Under the absolute ownership theory in Pennsylvania, Texas and Arkansas, the landowner has title to the land and the mineral resources found beneath the land, such as gold, oil and gas, et cetera. During the diamond rush of 1870 to 1902 in South Africa,[6] lands filled with glimmering metal significantly and rapidly changed the transition of relatively poor black South Africans to middle-class and rich

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[1] Njenga GN and SB Clough y RT Rapp, "The Feudal System in Medieval Europe (7th-14th Century A.D.): A Summary" (1986) available at <https://core.ac.uk/download/83042105.pdf> accessed 11 April 2025.

[2] Hopcroft RL, "The Social Origins of Agrarian Change in Late Medieval England" (1994) 99 American Journal of Sociology 1559 available at <https://www.jstor.org/stable/2782584> accessed 11 April 2025.

[3] Jauro AS and Ibrahim Y, "A Review of the African Traditional Perspective on Land and Its Resources" (2016) 2 International Journal of Social Science and Economics Invention available at <https://doi.org/10.23958/ijssei/vol02-i05/01> accessed 11 April 2025.

[4] Pamoo, "Cultural and Legal Considerations in Family Land And Property Inheritance In Nigeria" (S.P.A. Ajibade & Co, September 21, 2023) available at <https://spaajibade.com/cultural-and-legal-considerations-in-family-land-and-property-inheritance-in-nigeria/> accessed 11 April 2025.

[5] Adoga-Ikong JA and Ibekwe AF, "Ownership of Oil and Gas in Nigeria: A Need for Paradigm Shift?" (2021) 5 PINISI Discretion Review 21 available at <https://ojs.unm.ac.id/UDR/article/download/22015/11375> accessed 11 April 2025.

[6] Noland M and Spector B, "The Stuff of Legend: Diamonds and Development in Southern Africa" [2006] MPRA Paper available at <https://ideas.repec.org/p/pra/mprapa/15575.html> accessed 11 April 2025.

families. While this was later hijacked by the Afrikaners,[7] who controlled the bulk of the resources in the South African state, it shows the grave importance of land and title to land.

In Nigeria, land ownership is a token of prestige and family history in relation to a particular locality.[8] The affinity of most people in Nigeria to a specific part of the country is done mainly by tracing their forebearers, as founders or early settlers in a particular land. While some people or groups shared close ties with their lands, nomadic groups like the Fulanis favoured moving and settling on parcels of land they deemed uninhabited.[9] The culture of travelling and settling on land was prevalent in the Rustic Age.[10] Still, with clearly defined geographical boundaries and an avalanche of land ownership regimes, the concept of nomadic living started dying a natural death.

Prior to the enactment of any law to regulate land ownership and transactions in Nigeria, different communities and societies operated their traditional and customary land tenure systems.[11] The principle of communal and family landholding was prevalent in pre-colonial Nigeria, and everyone was entitled to some parcels of land for farming purposes, which devolved into family landholding upon passage to offspring at the demise of the landowner. The customary land tenure did not recognise the rights of foreigners to own land, but they could get lands as customary tenants who had to pay customary tenancy.[12] While there was a repulsion of foreigners holding communal land,

[7] Magubane B, "The Impact of the Mineral Revolution, 1870-1936" (1936) available at <https://repository.up.ac.za/bitstream/handle/2263/24554/04chapter4.pdf?sequence=5> accessed 11 April 2025.

[8] Pamoo, supra note 4.

[9] Cinjel ND and Oboromeni W, "The Fulani in Nigeria and Their Herding System: Is It an Agro-Business or a Culture?" (2024) 15 Journal of Policy and Development Studies 111 available at <https://doi.org/10.4314/jpds.v15i1.8> accessed 11 April 2025.

[10] Ibid

[11] Okpala CA and others, "Comparative Analysis of Land Use Act Using Traditional Method in Imo-Anambra States, Nigeria," vol 4 (2022) available at <https://ijaem.net/issue_dcp/Comparative%20Analysis%20of%20Land%20Use%20Act%20Using%20Traditional%20Method%20Nimoanambra%20State,%20Nigeria.pdf> accessed April 12, 2025

[12] Otu MT and Edet J, "The Status of Customary Tenants in Relation to Land Held by Him: An Overview of Customary Law" (2023) 2 International Journal of Law and Society (IJLS) 1 available at <https://doi.org/10.59683/ijls.v2i1.34> accessed April 12, 2025

some people - either foreigners or locals began to occupy certain portions of land deemed abandoned.

This was particularly true in certain parts of Nigeria, where some lands were designated as "evil forests" and abandoned for decades.[13] Such lands were believed to be accursed or the dwelling place of spirits or mythical creatures, hence, unfit for cultivation or any form of economic activity. This lacuna laid the foundation for certain people or groups, usually unsuspecting migrants, to inhabit these lands. Traditionally, there was a principle of non-disturbance when travelers or sojourners settled on land since they were peaceful and respected the norms, cultures and traditions of their host communities. This was the foundation for the doctrine of adverse possession in local parlance.[14]

The exact origin of the doctrine of adverse possession cannot be pinpointed, but it has been suggested that this concept dates back to ancient Rome.[15] At the same time, some scholars say that the concept originated in ancient Egypt, with a claim that the doctrine was mentioned in the *code of Hammurabi,* which was written approximately 2000 BCE.[16] The first mention of adverse possession under English law is said to be found in the Statute of Westminster (1275).[17] Under the Westminster Statute of 1275, there were limited provisions or remedies for recovering land once it has been possessed and this clearly laid the foundation for adverse possession.[18] At common law,

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[13] Emeasoba URB and Ogbuefi JU, "The Dynamics of Land Ownership by Deities in Anambra State Nigeria." (*Emeasoba | Research on Humanities and Social Sciences*, 2013) available at <https://iiste.org/Journals/index.php/RHSS/article/view/5583> accessed April 12, 2025

[14] Onanuga K, 'Adverse Possession in Nigeria, A Legal Practitioner's Perspective' (March 2025) OAL Available at <https://oal.law> (accessed 17 April 2025).

[15] Shashi SSK and Judicial Academy, Jharkhand, "Title by Adverse Possession" available at <https://jajharkhand.in/wp-content/uploads/2023/06/column-003_13062023.pdf> accessed April 12, 2025.

[16] Verma, L, "Adverse Possession : Origin, Development and Provisions in Modern Law" available at <https://www.legalserviceindia.com/legal/article-6393-adverse-possession-origin-development-and-provisions-in-modern law.html#:~:text=Among%20ancient%20Romans%2C%20it%20was,title%20owner%20of%20the%20land.> accessed 16 January 2024).

[17] *Ibid.*

[18] William; Nash, Howard P., Editors Mack. *Cyclopedia of Law and Procedure,* (1901-1912, New York, Amer. Bk. Co).

there is a presumption of ownership in favour of an adverse possessor after a specified period of possession.[19] This presumption has become a vital aspect of the rules that regulate property law in different parts of the world, including Nigeria, and there has been a plethora of philosophical arguments canvassed for the sustainability of the doctrine of adverse possession in modern property law. These views will now be examined in detail through theoretical foundations on the subject.

2. THEORETICAL FOUNDATIONS OF ADVERSE POSSESSION

Numerous views have attempted to substantiate the legality of adverse possession in the jurisprudence of property law. These theories attempt to rationalise the operation of adverse possession in society and are referred to as the traditional theories[20] The Utilitarian theory, the occupation theory, the personhood theory and the labour theory are some traditional theories on adverse possession which will subsequently be discussed.

Smith, in his doctoral thesis[21] stated that the theoretical underpinnings of adverse possession have moved from just the traditional theories to theories emanating from the peculiar nature of certain land tenure systems, which do not allow for the application of the doctrine of adverse possession.[22]

Other theories have emanated as part of statutory legal inhibitions, like the abolishment of absolute ownership under the Nigerian Land Use Act 1978, where land is now vested in the Governor of a state and said to hold the land in trust for the people.[23] The emergence of these theories challenge the scope and applicability of adverse possession. The greatest contention against the doctrine is that it sets the scene for land grabbing; it is unfair and unjust and can have debilitating effects on

[19] The limitation laws of various Nigerian States provide for a 20year period for state property/land while 12 years for an individual land before the issue of laches and acquiescence comes up. An example is in s.25 (2) (a) of the Limitation Laws of Lagos State, 2003.

[20] Occupation theory, utilitarian theory, personhood theory, economic theory, and social function of property theory.

[21] Smith I.O, "Application of the Doctrine of Adverse Possession under English and Nigerian Law: A Comparative Study" (2021) A Doctoral Thesis in Law presented to the National University of Ireland. p.70. Available at <http://hdl.handle.net/10379/16801> last accessed 23 December 2024.

[22] The relativity theory under the Islamic land tenure system.

[23] S.1, *Land Use Act* (LUA) (1978). Chapter L5 Laws of the Federation of Nigeria 2004.

the poor and marginalised like the less privileged and widows. Similarly, there are arguments that the doctrine of adverse possession is a vestige of colonialism and contrary to what is obtained under Nigeria's customary land tenure system, where landholding is communal and familial.[24] The practice of fallow farming is prevalent. This concern of the usurpation of the original title under the customary land tenure system has reared its head in light of the modern complexities of absentee landlords and the contemporary real estate investment boom. To this end, it is imperative to consider the traditional theories of adverse possession in order to ascertain if they are compatible with trends in modern property law and where inconsistent, highlight the implications of such incompatibility on the veracity of claims made by adverse possession proponents.

2.1 UTILITARIAN THEORY

This theory is deeply rooted in the belief that policies, rules, laws and regulations should achieve the greatest happiness for the greatest number of persons. The utilitarian concept does not regard any policy or rule as inherently draconian or bad.[25] Still, it examines the consequences and results of such actions to determine their efficacy and suitability for the concept it was created.

The utilitarian theories and its ancillaries share four salient elements: consequentialism, welfarism, impartiality and aggregationism.[26] Jeremy Bentham, the father of utilitarianism, posits that resources in a state must be used for the well-being of the people. This position lays a solid foundation for the doctrine of adverse possession as the proponents aver that it is against reasoning to prevent those who use land for productive economic activities to be sent packing from the land.

A core argument of the proponents of this doctrine lies in the fact that adverse possession contributes significantly to the development of the society because lands that are non-occupied either waste away or, in some instances, affect the value of the neighbouring property. The

[24] Anene C.P and Njoku C.U, "Land Use Act: A Re-Enactment Of Colonial Land Policy In Post-Colonial Nigeria", (2022) *Aku: An African Journal Of Contemporary Research* Vol. 3 No. 1.

[25] Ellickson RC, "Adverse Possession and Perpetuities Law: Two Dents in the Libertarian Model of Property Rights" (1986) 64 Washington University Law Review 723 available at <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1464&context=fss_papers> accessed April 12, 2025.

[26] MacAskill, W., Meissner, D., and Chappell, R.Y. (2023). "Elements and Types of Utilitarianism" In R.Y. Chappell, D. Meissner, and W. MacAskill (eds.), An Introduction to Utilitarianism available at <https://www.utilitarianism.net/types-of-utilitarianism, (accessed 20 January 2024).

utilitarian theory contends that property is not a natural right but a positive one.[27] Hence, if the appropriation of land through adverse possession would serve the interests of the greatest number of persons, it must be allowed to subsist. John Stuart Mill[28] noted that no exclusive right to property should be granted to a man who cannot put it to good use. He notes that ownership of land is birthed on possession of land for a certain period of time without any contention or claim being laid to this property.

However, as Smith points out, no "empirical evidence" shows that adverse possession contributes to the socio-economic advancement of any society. He rightly argues that this notion is based on the assumption that the adverse possessor will use the land productively as opposed to letting it lie fallow.[29] The perception that land which is undisturbed is useless is presumptuous as productive usage is largely subjective, especially in agrarian or rural areas where some lands are deliberately excluded from tilling or conducting any form of activity to enable it to restore and grow to its position of fertility.[30] In the same vein, what is termed "usage" for the purpose of the adverse possessor might be detrimental to the neighbouring or adjacent property. This calls into question whether there is a unique test for determining whether the use of land is significantly positive for society[31] but as Smith notes, productive usage is not a fact to be established for a claim of adverse possession to be successful.[32] While it is true that the utilitarian theory is one way to tackle the abandonment of property, depreciation and the commitment of society's scarce resources to the renovation of property, it falls short of the modern conception of conservation, afforestation and lands earmarked to protect wildlife conservation.[33]

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[27] Legal Maxims "Theories of Property" available at https://www.legalmaxim.in/theories-of-property/ (accessed 20 January 2024).

[28] John Stuart Mill, *Principles of Political Economy with some of their Applications to Social Philosophy* (London: John W. Parker, West Strand, 7th edition, 1870), p. 23.

[29] Smith, supra note 21.

[30] *Ibid.*

[31] Katz L, "The Moral paradox of adverse possession: sovereignty and revolution in property law" (2010) 55 *McGill Journal of law*. Society no longer prefers development and it cannot be seen as the ultimate test of usage.

[32] *Ibid.*

[33] Sprankling J. G, "Environmental Critique of Adverse Possession'. (1993) *Cornell L. Rev., 79,* 816.

The non-active use of land is usage if the utilitarian theory is anything to go by. The seclusion of certain portions of land in the society as sacred groves protects a group's religious, cultural and traditional heritage. The immense benefits of greenery and trees to the environment in light of climate change and unfolding environmental issues challenges the theorisation of utilitarianism as a valid justification for adverse possession because "abandoned land" has its intrinsic and profound impact on the society.[34]

2.2 OCCUPATION THEORY

The foundation of this theory rests on the belief that property is a natural right. This theory presupposes that ownership of property rests with the first discoverer and settler. This has been the view held from the time of Roman Jurists and affirmed in the thoughts of philosophers like Immanuel Kant and Grotius.[35] Grotius argues that all humans inherently have a right to a portion of the earth and that they share the resources. Thus, he asserts that the first person to seize a property holds the title to that property until another person with a better title dispossesses them. This first occupancy theory somewhat underlies traditional and modern property law. This view can be found in the postulations of the French thinker, Jean Jacques Rousseau,[36] who put forth a first occupation theory based on labour, which is similar to the Lockean labour theory but substantially different as the occupation theory does not impose a duty other than being the first acclaimed occupier of that land or property.

The dividends of the occupation theory include the certainty and security of possession until another person can demonstrate a better title. This philosophy states that once someone has retained possession over a land for a long period of time, then ownership can be inferred. This lays

[34] Cibele Q, Beilin, R, Folke C, and Lindborg R "Farmland Abandonment: Threat or Opportunity for Biodiversity Conservation? A Global Review." (2014) 12 *Frontiers in Ecology and the Environment*, p. 288.

[35] Cohen M.R, "Property and Sovereignty*"* (1927) 13 *Cornell Law Review.* available at https://scholarship.law.cornell.edu/clr/vol13/issl/3 (accessed 20 January 2024).

[36] Stanford Encyclopedia of Philosophy, "Jean Jacques Rousseau" (April 21, 2023) available at <https://plato.stanford.edu/entries/rousseau/#:~:text=In%20the%20Discourse%20on%20Inequality,alienation%20from%20his%20own%20self.> (accessed 20 January 2025).

the foundation for the doctrine of adverse possession, but historically, the earth has never been a thing with no owner. The virgin lands, bushes, hunting forests or pasture have always been regarded as the common patrimony of the community.[37] Hence, unoccupied land has never been without an owner as it is continually owned by the community. How then can one acquire ownership of a property by occupancy when the interests of the true owners - the community, has not been extinguished?

Cicero in his work *De Officiis*[38] wrote on private property and believed that the world is God's gift to mankind and everyone must be allowed to get a portion of their own gift by appropriating land and that man must be able to get what is due to him. This theory, though noble and seeking to create a utopian society where there is equality of opportunities, negates the pervading rule of life that the strong will prevail over the weak and the rich over the poor. The occupation theory is a hard justification for private property in today's world as it can be used to systematically dispossess indigenous communities that have now become a minority of their land and to deny them of the resources attached to the land.

A crucial point that the occupation theory neglects is that the theory is incompatible with modern land tenure and registration systems where title to property is acquired and not found. No one acquires a title in a good by simply discovering it; the person ought to part with some form of consideration before the title can be transferred.[39]

The economic disparity and the hold of capitalism in the modern world means that there would not be equality of outcomes with an application of the first-in-time rule.[40] Since a fundamental element of adverse possession is possession, the occupancy theory is pivotal to any claim of adverse possession. Considering the dynamics of life and power imbalance, should the weak be let

[37] Abyssinia Law. "Theories of Property Rights" available at https://www.abyssinialaw.com/study-on-line/395-land-law/7893-theories-of-property-rights (accessed 20 January 2025).

[38] Cicero, M.T, *De Officiis (On Duties, On Obligations, or On Moral Responsibilities.* 44 BC treatise.

[39] Nicholas T, "Property Law - Occupation Theory" available at https://prezi.com/mn0giayl9vtd/property-law-occupation-theory/ (accessed 20 January 2025).

[40] Rehbein B, "Capitalism and Inequality" (2020) 35 Sociedade E Estado 695 available at <https://doi.org/10.1590/s0102-6992-202035030002> accessed April 12, 2025.

to suffer or go without property if the first occupancy theory is to be followed? If three persons are on grassland and one person claims two-thirds of the land, will it be fair to the other two persons for them to leave under this inequitable condition?[41] This theory is anachronistic and has no place in the jurisprudence of modern property law and by extension, does not substantiate the doctrine of adverse possession.[42] Regardless, it must be noted that the law is not idealistic but pragmatic and occupation theory continues to form a bedrock in our property jurisprudence, especially concerning adverse possession.

2.3 LABOUR THEORY

From microeconomics, labour is seen as one of the factors of production and instrumental to the creation of wealth.[43] John Locke was the first scholar to advance arguments for the acquisition of rights in property by exerting labour or expending resources to improve land in his popular and ancient work "Two Treatises of Government" in 1690.[44] He argues that a squatter who has improved the land through labour has an interest in the land over that of the true owner who abandoned it. The reasoning behind this theory is that land exists in its natural state, and anyone who exerts labour over an unowned land has properly appropriated the property. Still, Locke provides a limitation to this theory. He posits that appropriation through labour will only be valid when there is enough land generally left for others to appropriate. Locke contends that no person should be able to appropriate more than what he needs to survive or thrive.

Moreover, Andrew[45] in his work, Property and Labour, he provides a quad dimension of labour theory. He identifies the idea of labour being used as an incentive for individuals to contribute to the development of society as espoused by James Mill in his work "Elements of Political

[41] *Ibid.*

[42] Supra note 39.

[43] Popular school of thought held in economics by Adam smith, John Stuart mill, Alfred Marshall, and other celebrated economics scholars.

[44] Locke J, "*Two Treatises of Government* "(1824).

[45] Reeve A, *Property and Labour* (1986. Palgrave, London) Pp. 112–151.

Economy".[46] Second, Andrew identifies the view of John Locke that a labourer is entitled to the fruit of his labour, and if it is property, then he owns an interest in them. Third, he accentuates Hegel's view that property is necessary for true liberty and freedom, which is realised by doing something positive, like labouring on the land. Fourth, Andrew highlights Karl Marx's alienated labour and private property view, where Marx explored the social character of labour and how it impacts his access to own property. Marx recognised that the labourer's sweat is not always rewarded but contends that for true peace in society, the right of the labourer to own property must be preserved. This view clearly emanates from Marx's view of life from the lens of class conflict, and it does hold some relevance when Marx was alive into the 20th century, but modern dimensions of property law do not readily agree with this postulation. The labourer is entitled to be paid for services rendered and is not rewarded for being a developer of a property to which he has no interest in as land is under a registration system and there exists nothing like the "commons" in modern property law.

Marxist economists have criticised the labour theory for providing a springboard of societal alienation where capital accumulation perpetuates dire socio-economic inequalities.[47] Further, they contend that the labour theory fails to consider that the value of a good or property is not determined by the amount of labour exerted in its production. It finds discrepancies between a conception of labour in a society where value is subjective and attempts to vest title by performing some positive acts on the land.

The theory is generally underwhelming as the notion that the labourer can appropriate land as long as there remains some in common or does not prejudice the living of its neighbours lacks a root in modern property law. Under the Nigerian Land Use Act 1978, all land has been appropriated to the Governor, who holds it in trust for the people, except land that operated under the customary land tenure system before the enactment of the Land Use Act.[48] With land now existing under a

[46] Ball, Terrence and Antis Loizides "James Mill" *The Stanford Encyclopedia of Philosophy*. available at https://plato.stanford.edu/entries/james-mill/#MilWri (accessed 20 January 2025).

[47] Bell, Stephanie A "A Chartalist Critique of John Locke's Theory of Property, Accumulation, and Money: Or, Is It Moral to Trade Your Nuts for Gold?" 62 *Review of Social Economy*, available at http://www.jstor.org/stable/29770243. (accessed 2 January 2025).

[48] ss 34(2) and 36(4) of the Land Use Act 1978.

legal regime where appropriation is only by transference of title or divestment of interest, how then can others have land in common to exert labour for the sake of their own appropriation?

2.4 PERSONHOOD THEORY

The personhood theory posits that property, by virtue of prolonged occupation of the squatter or trespasser, forms an attachment to the land as opposed to the landowner who has become detached. The crux of this doctrine rests on the view that for title to be taken away from an adverse possessor, due consideration must be taken regarding what level of difficulty taking it away will cause to the squatter. Even more, if compensation in terms of pecuniary considerations cannot significantly assuage the grief of the adverse possessor, then it can be said that the person has formed a personal attachment to the property.

The proponents of this theory hold that property has more meaning and deep personal significance to people to the extent that it largely determines their identity or the question of self.[49] This property houses memories, aspirations, and bonds, has a significant or nominal impact on the wellbeing of persons. The theory of personhood vehemently rejects the view of property as mere economic assets and contends that humans can have deeper connections to objects or certain places. It avers that the sentimental attachment to property is what sometimes drives people who would otherwise not have any business with a particular location to commit their human and financial resources to develop or carry out long and medium-term investments. Clearly, personhood suggests that property has its own intrinsic value and cannot be confined to only its economic and exchange value. This is a purely strong moral dimension of property rights but the doctrine itself challenges the concept of property rights from purely purpose-driven legal principles that have come to underpin most modern property regimes all over the world.[50]

[49] Radin M.J . "Property and Personhood" (1982) 34 *Stanford Law Review,* pp.957-1015.

[50] This aptly captures the rationales and justification of enacting the Land Use Act 1978, where absolute ownership was abolished, and only a right of possession or occupancy now subsists under that regime with the exceptions of the customary land tenure system.

Hegel argues that there is a nexus between property ownership and individual freedom.[51] He asserts that true liberty to express one's self is significantly attached to property ownership. This view is a corollary to the landmark work of Margaret Jane Radin on "Personhood and Property" where she explores the delicate intricacies and overlapping interests of property ownership and self. Margaret stretches the importance of sentimental attachment, especially concerning property that is now considered an heirloom.[52] However, she notes that not all forms of property come under personhood, but those ones are referred to as personal property or property for personal autonomy. She distinguishes what the doctrine of personhood seeks to achieve and fetishes by using a wedding ring and a shoe. A wedding ring holds a more sentimental attachment than regular shoes.

The personhood theory is at the core of driving the conversations around stronger tenant protection rights. It argues that as tenants develop a significant attachment to their homes, the law must shield them from arbitrary eviction and not just keep their fate in the fluctuating hands of economics and market forces. While this theory strongly frowns against commodifying every aspect of personhood, it provides room for legal uncertainty. It hinders economic development as the government is forced to respect property's emotional and psychological significance. However, emotions are not stable, thus potentially leading to inefficiencies in the property regime of states. Regardless, there are stronger reasons for why this theory must be a guiding light in the property regime of any country of the world.

Protecting the rights of indigenous people seems to be at the crux of this doctrine as displacement of indigenous communities is a grave issue under international law and human rights. By extension, there is a valid contention that the preservation of culture and cultural artefacts is an essential reason for this theory to stand. Governments' practice of seizing private property for state use is admonished under this theory. It will be a rarity if the government considers that it has deep personal value to the people. While every man is free to divest or dispose of his property anyway, he deems fit or to subscribe to any type of personal law, this theory can influence inheritance laws to consider sentimental attachment over rules such as primogeniture. A major issue with this theory is balancing the competing individual interests and the broader societal interests. Still, Margaret

[51] Hegel, G.W.F., *Hegel's Philosophy of Right*, tr. T.M. Knox, Oxford University Press, 1978.

[52]Ibid n.48. An heirloom is a valued possession that has been passed down through different generations.

already provides a solution when she draws a distinction between sentimental attachments and fetishes on the one hand and outlines how this theory should only apply to what she termed "property for personal autonomy".

It seems, and in line with logic and humanity, which this doctrine provides a valid justification for adverse possession especially when one considers the increasing popularity of evictions in gentrifying neighbourhoods.[53] This theory appeals to conscience, humanity, and morality but the law is not always in sync with morality. It is believed that this theory represents the only view that can be reasonably upheld in modern property law and thus, any argument for adverse possession that rests largely on this doctrine is bound to generate controversies and divergent views.

3. ELEMENTS OF ADVERSE POSSESSION

In a practical sense, adverse possession involves obtaining ownership of someone else's property. The underlying principle is that justice should be served to an innocent party who has peacefully possessed the property for an extended period, operating under the assumption of a valid title and having invested resources or efforts, thereby altering their position.[54] When justice and fairness dictate, the justification lies in safeguarding adverse possessors or trespassers. However, there are requirements to be established by evidence from the defendant in an action before the rule can be relied upon. While the elements of adverse possession may vary slightly in terms of wordings used in various jurisdictions, some fundamental elements are common in all jurisdictions.

3.1. FACTUAL POSSESSION

In all jurisdictions, the element of factual possession is key. There must be exclusive possession of the land for an adverse possession claim to succeed.[55] In ***Pye (Oxford) Ltd v Graham*****,** the House of Lords defined factual possession as "a sufficient degree of physical custody or control".[56] This

[53] To "gentrify" means renovating or improving something, especially housing, to make it more appealing to the middle class or rich (often with the negative association of pricing out existing residents).

[54] Smith I.O, *Practical Approach to Law of Real Property in Nigeria'* (2013: Second Edition), p. 52.

[55] Spanish Civil Code, Article 1941; French Civil Code, Article 2229; Hungarian Civil Code, Section 121; Polish Civil Code, Article 172; Slade J in *Buckinghamshire County Council* v *Moran* [1990] Ch. 623.

[56] [2003] 1 AC 419 HL, para. 40.

would occur when the original owner had been dispossessed or had discontinued possession of the land (such as when the owner has abandoned the land) and the claimant had taken possession of it.[57] It has been upheld that possession must be "open, notorious and unconcealed,"[58] so that the true owner would notice it upon a reasonably careful inspection of the land. This allows owners to challenge the possession before it becomes a threat to their title.

Adverse possession cannot be consensual and so is never adverse if enjoyed under a lawful title,[59] or by licence.[60] If the scope of the licence is significantly exceeded, the fact that the initial entry was under permission will not prevent commencement of adverse possession. This was also established in the Nigerian case of ***Akpan Awo v. Cookey Gam*****,**[61] where the claim of the plaintiffs to the disputed land failed because the defendants, under a mistaken belief that they were the owners of the land had exercised acts of ownership by entering into agreements with strangers, for many years without any form of interference from the plaintiffs to assert their rights under native law and custom. In elucidating the requirements of adverse possession, it was held that the defendant must establish that he or she qualifies as an adverse possessor, as against being a tenant or licensee or enjoying any form of occupational right within the title of the plaintiff. The adverse possessor must show that his or her interest in land was not derived from the plaintiff.[62] Flowing from this, a claim to title by a customary tenant would fail.[63]In some jurisdictions, it has also been

[57] Harpum C, Bridge S and Dixon M, Megarry & Wade: *The Law of Real Property* (Sweet & Maxwell, 8th ed, 2012) 1462–3 [35-015].

[58] Lord *Advocate v Lord Lovat* (1880) 5 App. Cas 273, at 291 and 296; D. A. Thomas, *Adverse Possession* in *Thompson on Real Property, (2016) p.75.*

[59] *BCC v Moran*, [1990] Ch. 623, at 636.

[60] *JA Pye (Oxford) v Graham*, [2003] 1 AC at 37.

[61] (1913) 2 NLR (101).

[62] Cairns W, McKeon*, Introduction to French Law*, (1995, *1st ed.*. Routledge-Cavendish). Available at <https://doi.org/10.4324/9781843142300.> last accessed 30 December 2024.

[63] *Epelle v. Ojo* (1926) 1 NLR 96.

upheld that possession must be peaceful.[64] This means that possession must not be forcefully acquired and must not be kept through violent means.[65]

3.2. INTENTION TO POSSESS (*animus possidendi*)

This is the mental element of possession, and in many common law jurisdictions, including Nigeria, factual possession must be accompanied by an intention to possess as a prerequisite for adverse possession. It involves "the intention, in one's own name and on one's own behalf, to exclude the world, including the owner with the paper title."[66] In ***Powell v McFarlane*,** the English court declined to find the requisite intention for the claimant who began to graze his cow on another's land at the age of 14. According to Slade. J, the intention of someone so young was not necessarily referable to any intention to dispossess and occupy the land wholly as his own property.[67] It must be noted that this requirement does not mandate a need to demonstrate an intention to own or acquire the land, but simply the intention to possess.[68]It includes both a subjective intention to possess as well as an outward manifestation of such intention.[69] A pertinent question that must be answered in relation to this mental element is whether a line should be drawn between an innocent and a willful trespasser.

3.2.1. THE GOOD FAITH REQUIREMENT

English law does not distinguish between an innocent and a willful trespasser.[70] This is in a bid to avoid the limitation of the scope of the doctrine. However, bad faith becomes relevant in the case

[64] French Civil Code, Article 2229; *Browne v Perry* [1991] 1 WLR 1297 at 1301.

[65] *Shaw v Garbutt* (1996) 7 BPR 14816, at 1481.

[66] per Lords Browne-Wilkinson and Hutton in *JA Pye (Oxford) v Graham* [2003] 1 AC, at 43 and 77; Slade L.J. in *Powell v McFarlane* (1977) 38 P&CR 452 at 471-472.

[67] *Powell v McFarlane* (1977) 38 P&CR 452 at 472.

[68] *Buckinghamshire County Council v Moran* [1989] 2 All ER 225.

[69] *Smith v. Waterman* [2003] EWHC 1266 (Ch) at para 19.

[70] *Prudential Assurance Co. Ltd. V Waterloo Real Estate Inc*. [1999] 2 EGLR 85 at 87.

of fraud or concealment of facts. In such instances, the limitation period only begins to run after the discovery of such fraud or concealment of facts on adverse possession.[71]

In some jurisdictions, good faith directly impacts the limitation period. For instance, in the Netherlands, if a person has held uninterrupted possession and has acted in good faith, he may acquire ownership after 10 years.[72] Where good faith is proved to be absent, an uninterrupted possession may give the possessor title after twenty years.[73] In the USA, where the legislation does not require an element of good faith, it remains open to the courts to take evidence of fraud or lack of bona fides into account when considering whether adverse possession has been established.[74]

In Nigeria, as stated in ***Akpan Awo v. Cookey Gam*****,** it must be proven that possession of the land was done under the mistaken belief of having title to the land. Such mistaken belief can play out where the defendant paid the purchase price and entered into possession, on the belief that the requisite consent of the family had been obtained or where the defendant encroached on the land of another on the belief that the land belonged to him or her.[75] Therefore, the defence cannot avail a defendant who knew the land belonged to another or that he or she had no bona fide claim to it.

3.2.2 OTHER CONDITIONS

As was stated by the Nigerian Court in ***Akpan Awo v Cookey Gam*****,** the third requirement, the defendant must prove, is that the plaintiff knew about the adverse possession but acquiesced in it. In the case of a family property, the knowledge of important family members suffices.[76] The fourth requirement is that because of the plaintiff's acquiescence, the defendant went on to expend money or resources or altered his or her position. This situation arises when the defendant has gone on to

[71] LA 1980, s.32(1).

[72] Article 3:99(1), Dutch Civil Code.

[73] Article 3:105(1), Dutch Civil Code.

[74] *Waggoner v Benton Beach Corporation*, 3 April 1998 Conn.

[75] *Aganran v. Olushi* (1907) 1 NLR 66.

[76] *Saidi v Akinwunmi* (1956) 1 FSC 107.

build on the land or exercise overt acts of ownership. The fifth requirement to be proven is that there must be no extenuating or mitigating circumstances that negatively impact acquiescence. The plaintiff's inaction or delay must not be due to a family relationship or intimacy between the parties, which had motivated some sort of settlement that resulted in a late institution of action in court. These requirements are, however, peculiar to a claim for adverse possession under customary land rights. The sixth and final requirement is that the length of time of possession by the trespasser must be long enough to establish prima facie evidence of acquiescence by the plaintiff. Under customary law, the duration a squatter can stay in adverse possession before the owner loses the right to take legal action is important and must be a sufficient and lengthy duration depending on the facts of the case. This is however different from the position where statute of limitations are applicable. According to Section 16 (1) and (2) (a) of the Limitation Law:[77]

> '(1) A state authority has a twenty-year limit to reclaim land from the date the right of action arises, with exceptions in subsections (2) and (3).
>
> (2) In a person's land recovery action –
>
> (a) The time limit is twelve years from when the right of action arises for the person or, if through someone they claim, for that person.'

Section 19 of the Limitation Law also states that adverse possession is a prerequisite for a right of action, triggering the limitation period. Notably, when the legally defined period for initiating land recovery actions expires, the person's title to the land is lost.[78] The length of time is determined on a case-by-case basis. However, in practice, the length of time is shorter when the adverse possessor developed the land than when the land is undeveloped.[79]

[77] Cap. L67, Laws of Lagos State, 2004.

[78] Ibid, Section 21.

[79] *Okiade v Morayo* (1942) LJR-WACA.

Webber J., further stated in the case of ***Akpan Awo v. Cookey Gam*,**[80] It is important to remember that the rule was simply on the grounds of equity and that parties should not be permitted to rely on native law principles, which were established during a condition of society that is now distinct from what is in place now. It has to be pointed out that these requirements are cumulative. They all must be met, if one requirement is absent, the defence fails.

4. ADVERSE POSSESSION OF LAND UNDER THE SINGAPORE LAND TITLES ACT

In Singapore, the Land Titles Act[81] permits limited application of the law of acquiring title by adverse possession of registered land. In addition to the LTA of 1985, the Land Titles Bill 1992 proposed abolishing the acquisition of title by adverse possession altogether regarding registered land. These major amendments are further considered under this segment.

Under the general law, title to land may be acquired by adverse possession through the operation of the Limitation Act.[82] Just like in Lagos State, the basis is the barring of the documentary owner from suing the trespasser after the lapse of twelve years from the time the right of action accrued.[83] This provision implies that time runs against the documentary owner and in favour of the adverse possessor either from the date of dispossession or discontinuance of possession and his title is extinguished by lapse of time. [84] The title acquired by the adverse possessor has been attributed to him on the strength of his own adverse possession. He does not get the title of the person he successfully dispossessed. He has a fee simple or whatever is the greatest interest that can be held in respect of that piece of land.[85] The justification for this method of acquisition of title rests on

[80] (1913) 2 NLR (101).

[81] Cap. 157, 1985 Ed.

[82] Cap. 163, 1985 Ed.

[83] *Ibid*., s. 9. *and its equivalent section under the Lagos Limitation Law, s.7.*

[84] See, *Fong Chong Cheng* v. *The Public Trustee* [1967] 2 M.L.J. 262.

[85] *Perry* v. *Clissold* [1907] A.C. 76. Where the person dispossessed has a leasehold interest the adverse possessor will also have to dispossess the reversioner to acquire the freehold

the public policy that the courts should not assist him who sleeps on his rights in the recovery of his property. [86] The LTA accepts the principle of adverse possession but adjusts its operation to suit the context of the land register.[87] This provision is an attempt to effect a compromise between the principle of indefeasibility of title and the policy that the law should not protect documentary owners who sleep on their rights as against persons who have established long possession.[88]

Furthermore, acquisition of title to registered land by adverse possession is permitted only as provided in Division II of the LTA.[89] Specifically, the law provides that a person who would have satisfied the general law that he has acquired land by adverse possession if that land were not under the LTA can apply for a certificate of title to that land provided that twelve years have elapsed from the time the land has been under the Land Titles Act or from the most recent memorial of registration or notification of an instrument. In the case of such land time runs against the documentary owner from the last activity on the register. For instance, where an adverse possessor of registered land has completed five years of adverse possession, and the documentary owner transacts a registered dealing, e.g., mortgage or lease or merely has a reassertion of ownership notified on the register, the adverse possessor's earlier five years possession would be extinguished and time would begin to run afresh from the last registration or notification of an instrument on the register.[90]

Where the documentary owner is not minded to transfer, lease, mortgage or charge the land he may keep his vigilance against would be adverse possessors by lodging a reassertion of his ownership of his interest with the Registrar who shall notify this on the land register. In other

[86] The concept of acquiring title by adverse possession is not compatible with the regime of registration of title under the Land Titles Act (hereafter LTA) which requires all interests in land to be registered before the interest in land passes and which confers indefeasibility on the registered title.

[87] Clause 50 of the Bill provides that except as provided in clause 172(8) and (9) of the Bill there shall be no acquisition of title to land under the LTA by way of adverse possession and the provisions of the Limitation Act for the extinguishment of title shall be not applicable to land under the LTA.

[88]T.S. YEE, "Adverse Possession of Land Under the Land Titles Act" (1992) *Singapore Journal of Legal Studies*, pp.481 –495

[89] See, s. 42 (1) LTA.

[90] Yee, *Ibid* (n88).

words, only the documentary owner who is uninterested in his land and who is not exercising his rights as owner in any way would be adversely affected.[91] But instead of having to be vigilant regarding the actual use and occupation of the land itself the need for vigilance is transferred to the register. The right of the adverse possessor to complete his twelve-year adverse possession even after the land has been brought under the LTA is recognised by the LTA in section 42(3). However, to extinguish the rights of the proprietor or documentary owner in line with the provision of section 42(3), the adverse possessor is required to lodge a caveat. The purpose of lodging a caveat is to alert the documentary owner of the imminent claim of factual rights over the land by the adverse possessor and see if the documentary owner would then take steps to eject the adverse possessor. If he lodges a caveat and the documentary owner still does not take steps to eject him, then he is truly dormant and deserves to lose his land.

However, the attitude of the land titles legislation to the acquisition of title by adverse possession has been altered by the provision of Clause 50 of the Land Titles Bill.[92] It provides that title to registered land may not be acquired by adverse possession and the provisions of the Limitation Act shall not apply to registered land. Clause 50 reads thus:

> Except as provided in section 172(8) and (9), no title adverse to or in derogation of the title of the proprietor of registered land shall be acquired by any length of possession by virtue of the Limitation Act or otherwise, nor shall the title of any proprietor of registered land be extinguished by the operation of that Act.

The above provision implies that no matter the length of adverse possession, the rights of the documentary owner are not extinguished by the adverse claim. However, given the declared

[91] Ibid.

[92] Now referred to as Land Titles Act 1992. This revised edition incorporates all amendments up to and including 1 December 2021 and comes into operation on 31 December 2021. Available at <https://sso.agc.gov.sg/Act/LTA1993> (accessed 17 April 2025).

intention of the Bill to expedite the conversion of land to the LTA, all persons who are in adverse possession of land should have their position regularised under the general law as soon as possible. This is by way of lodging an appropriate caveat to awaken the sleeping or indolent documentary owner whose rights may be extinguished after successful completion of twelve years of adverse possession.

5. MODERN CHALLENGES, CRITICISMS, AND POLICY REFORMS OF ADVERSE POSSESSION

This segment identifies some of the modern challenges and criticisms of adverse possession as a method of proving ownership to a land and offers policy reforms towards the abolition of the doctrine.

5.1. Challenges and Criticisms of Adverse Possession in Modern Property Law

The doctrine of adverse possession is a very stringent to prove as a means of asserting title to a land or property. With the evolution of property law into registered and unregistered land, it is becoming herculean to assert title to land. Specifically, it is a legal impossibility to claim title to land in Nigeria for an area that is registered or under the Land Use Act and various Land Registration laws of different states.[93]

In Lagos State, Section 112 of the Land Registration Law establishes a structured procedure for adverse possessors seeking to register their titles. The law specifies distinct possession periods for state and individual land being 20 years and 12 years, respectively. The Registrar oversees the registration process, necessitating advertising and subsequent court orders for confirmation.

Adverse possession, as defined in Sections 112(3) and (4) of the LRL, encompasses various elements, including the receipt of rent by a person wrongfully claiming the land in reversion. The law allows an adverse possessor to aggregate possession periods with predecessors or others in physical possession, extending the cumulative claim. While the LRL provides a framework for adverse possession, customary law introduces limitations. Section 68 of the Statute of Limitation

[93] The doctrine of adverse possession has been abolished in some provinces of Canada and some states in Australia.

excludes customary law from the acquisition of ownership by prescription, restraining the registration of interests against customary titles.

Criticisms against adverse possession under the LRL are multifaceted. Some of the opponents of this doctrine drawn from the relativity theory and grant theory argue that, adverse possession contradicts its intended purpose, serving as a shield against stale claims while ensuring security of title.[94]Sections 278/279 of the Criminal Law of Lagos State deem unjust encroachment of real property an offence, challenging the legitimacy of adverse possession. The Land Use Act (LUA) in Section 37 declares wrongful possession illegal, conflicting with the provisions of Section 112 of the LRL.

Additionally, the Lands Law of Lagos State, particularly Section 32, discredits adverse possession claims to state land, labelling it as an offence. Adverse possession potentially infringes on constitutionally guaranteed property rights and the indefeasibility of title, as outlined in Sections 43/44 of the 1999 Constitution. Furthermore, the concept challenges the core purpose of land registration, undermining the notice-to-the-world principle, especially when the actual owner is unaware of adverse possession.

Proponents of adverse possession argue that it serves to rectify historical injustices and prevent endless land disputes. Additionally, they contend that adverse possession aligns with the general concept under Statutes of Limitations. The case of ***Pye Oxford Ltd v Graham*** in the UK prompted a re-evaluation of adverse possession laws. The UK Land Registration Act of 2002, in response to *Pye,* introduced a more comprehensive process, including personal notice, counter notice, and a specific time frame for legal action.

Section 66(f) of the LRL establishes the paramountcy of an adverse possessor's title over other interests. The ***Majekodunmi v Abina*** case further clarifies that registration alone does not confer title, emphasising the need for a thorough investigation by the Registrar. To address criticisms, a restrictive judicial interpretation grounded in unjust enrichment principles could safeguard the

[94] The oppositionist theories such as relativity and grant theories, according to Smith were developed from the peculiar circumstances of a land tenure system under the customary and Islamic land tenure system or from the emergence of the compulsory State grant. See, Smith, supra note 6, p.31.

interests of registered landowners. Considering the flaws in the current registration process, it is advisable to exclude adverse possession registration for registered land and adopt the more comprehensive

5.2. Policy Reforms in the Application of the Doctrine of Adverse Possession

The doctrine in its present state assumes that the true owner knows about the infraction of the squatter or trespasser, but this is not always true. To this end, it is recommended that any adverse possessor should send a written notification to the true owner seeking their consent. This is to prevent the loss of land inadvertently. The foregoing presumes that the squatter is one without any equitable right as the case with many modern cases of adverse possession is that there are competing interests in the land where someone has invalidly transferred title but later turns out to be a charlatan who has no vested interest in the property. This was prevalent in Nigeria and particularly in Lagos State, where the *"Omo ONILE*",[95] as they were popularly called, assumed ownership of land which does not belong to them and sold it to unsuspecting buyers.[96]

This situation generates controversy when the true owner of the land discovers that someone is illegally occupying its land or property and tries to eject the squatter. Under this circumstance, it becomes clear that the landowner's consent was not obtained, and the number of years spent on the land is tantamount to years as a tenant and not an adverse possessor. The requirement of notification and consent of the registered owner is done in England and Wales pursuant to the Land Registration Act 2002. This gives the registered owner the opportunity to reject the squatters claim. Registered land is however not amenable to adverse possession under Nigerian law.

In the same vein, it is recommended that the time period for adverse possession for individuals be increased to 20 years to remedy the case of absentee landlords and the rights of children who might have lost parents property to relatives or strangers upon the demise of their parents. Furthermore, in order to provide an equitable balance between the rights of owners and squatters, it is

[95]The word "Omo-Onile" (a Yoruba term) literally means "child of the original landowners". See, Owoeye T, 'Resolving the Omo Onile Land-related Crisis in Lagos, Nigeria' (2018). Available at <https://kujenga-amani.ssrc.org> accessed 17 (April 2025).

[96] The Omo-Onile constantly encroaches on land that has been lawfully obtained by others and sells the same area of land to many customers. In other instances, they demand unlawful payments, threaten or assault building site workers, and make it impossible for land buyers to take control of their property after purchase. *Ibid*.

recommended that the government introduce a compensation scheme to provide some form of relief to owners who have invested in their land or earned it through inheritance.

Alternatively, every land in contention between an adverse possessor and land owner who cannot reach an amicable settlement should temporarily enter into the registered land domain for 4 to 6 years. The party that pays the land use charge gets the real title. The reasoning behind this is that if someone or a group will contend for land, they must have put the land to good use. Caution is, however, advised as this will inherently polarise the society and make it a world where the rich always have their way. For poor and marginalised communities, they need to show how they have put the land to productive usage and how their usage of the land directly contributes to the economic advancement of their locality, the social value attached to whatever has been created on the land or how the usage of their land holds an intrinsic value to the community. Once this can be established, the true owner must compensate the government for his or her loss.

Additionally, it is suggested that there should be a reformation of how land is administered under the customary land tenure system or in places without a registered land tenure system. The high chief or traditional ruler should have a book that accurately describes property and land in the community and whose family or individual it belongs to. Thus, anyone who relies on the defence of honest belief that it was their land and failed to ascertain whether it belonged to him would not be availed of the defence of adverse possession. This book will function like a log book or register of some sort.

Ultimately, the dichotomy between unregistered and registered land tenure systems should be abolished. This would mean a total abolition of the doctrine of adverse possession from the jurisprudence of modern property law as obtains in Singapore.

6. CONCLUSION AND FUTURE DIRECTIONS

The paper has examined the theoretical underpinnings of adverse possession, its evolution through case law and statutory limitations, and the modern challenges and criticism of adverse possession. It found that the social policy considerations of adverse possession are contrary to fairness and justice and tantamount to enabling land grabbing. The paper thus advocated the need to remodify or expunge the doctrine of adverse possession from the body of property laws, rules, regulations

and principles. The much-needed reform is in the context of contemporary reality of modern times as the doctrine has raised more dust than it brought clarity. The doctrine has proved to be a perfect cover for the rich to usurp the proprietary rights of the poor. Rhetorically, how can a child orphan respond to the issue of a stranger or uncle building on his inheritance? In the circumstance, the remedy the law affords such a child might already be extinguished before he has the mental fortitude to appreciate the usurpation of his rights that has occurred. The paper had contended that, the doctrine of adverse possession no longer has a place in a modern society where there is nothing like abandoned, unowned or unoccupied property. This assertion holds way as the contemporary property system relies on a title registration system where people can trace ownership or how the property came to be with one person. While the rights of poor communities might be called into question, adverse possession is not the right cause of action but an establishment of their case under human rights to assert their rights as indigenous or aboriginal people. By way of specific recommendation to stem the tide of adverse possession, Nigerian legislature at all level, must make specific legislation outlawing the practice of adverse possession. This legislation must ensure adequate mechanism to protect the legitimate interest of the owners of land against adverse possession. Such mechanism should prescribe severe penalties with various prison terms for different offenses to deter others from the practice of adverse possession.

THE LEGALITY OF THE NATIONAL HEALTH INSURANCE SCHEME FOR NIGERIAN MUSLIMS

Mistura A. Mohammed-Yusuf* and Moriam O. Ahmad**

Abstract

Human life faces challenges) and health is not left out. It suffices to say that life and health are inseparable twins. Protection of human life should be prioritized by giving special attention to health, this is because if health is challenged, medical attention becomes essential, and as such, requires finances. National Health Insurance Scheme (NHIS) was established to facilitate quality and cost-effective health care services(s). Notwithstanding the importance of this scheme, its legality under the Islamic Law is challenged, and this has militated against its acceptability among some Muslim Scholars, because Muslims' acts and involvements are guided by the Islamic Law and the operation of (NHIS) is partly inconsistent with the Islamic Law. The article investigates the operational aspect of (NHIS) that are in contravention of the Islamic Law, it analyzes the mode of operation of the Islamic Health Insurance (Takaful).It gives insight on Islamic law compliant Health Insurance (Takaful) and creates awareness of the Islamic Health Insurance (Takaful), proposing Tabarru' and waqf as viable Islamic tools to sustain health insurance in Nigeria. To achieve this, the doctrinal research method has been adopted, wherein literatures were consulted and reviewed, the result is to divulge the inconsistency of the National Health Insurance Scheme (NHIS), with Islamic Law, intimate the Muslim majority of the benefits in Islamic Health Insurance (Takaful).

Keywords: Takaful, Tabarru', Waqf, Islamic health, Insurance

1. INTRODUCTION

To every human being, life is a valuable asset upon which every other thing in life is made possible[1]. Therefore, it is right to say that the right to life is supreme and fundamental, it is a right that its absence can render other rights meaningless, thus, it cannot be tampered with[2]. According to Article 6(1); every human being has the inherent right to life. This right shall be protected by

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[1] M.A Baderin, *International Human Right and Islamic Law* (oxford University Press, 2009) p67

[2] Ibid

law. No one shall be arbitrarily deprived of his life[3]. Which is in perimaterial with the provision of *Shari'ah*, as there area plethora of verses of the *Qur'an* and the *hadith* of the prophet where protection and acknowledgment of sanctity of life is fundamentally emphasized to the extent of it not capable of being denied[4]. Allah (s.w.t) says '… do not kill the soul which Allah has forbidden except for the requirement of justice…'[5]. In another verse, Allah says; And do not kill anyone whom Allah has forbidden, except for a just cause…'[6]. The prophet (s.a.w) says; verily your lives and properties are sacred to one another until you meet your lord on the day of resurrection'[7]. In any event of a health challenge, which in most cases creates a threat to life, the National Health Insurance Scheme (NHIS) has been put in place to facilitate quality and cost-effective health care service for the insured and their immediate family member. The present day National Health Insurance Scheme (NHIS) was a reincarnation of the 1962 idea, which was recommended by a committee commissioned by the health Minister in 1988[8]. Owing to the congestion in the administration back then, the Law that established the Scheme did not enjoy prompt attention and so was signed into law sometime in May 1999. Having faced such delay, the law became active in the year 2005[9].

Research has shown that the mode of operation of the National Health Insurance scheme (NHIS) in Nigeria is contradictory to the principles and practice under Islamic Law, as a result of this, its legality becomes questionable and acceptability by the Muslim population came out so low. Reason for this is that, every aspect of a Muslim life is *Ibadah,* it is guided by a divine Law, *Sharia'h,* hence, he earns reward for doing it and gets punished for it neglect[10]. Therefore, whatever a Muslim must get involved in must be one that is lawful within the context of Islamic Law. Going through the operational guideline of National Health Insurance Scheme (NHIS), it is crystal clear that there is an atom of *riba* (usury), *gharar* (uncertainty), *maysir* (gambling), which

[3] International Covenant on Civil and Political Right 1966
[4] Baderin (n 2)
[5] Surah Al-Imran 6:151
[6] Surah Al-Isra 17:33
[7] Al-Buhari and Muslim
[8] https://www.healthinsurance.com.ng.history.health-insurance-in-nigeria. Accessed on, 05/08/21 @12:25pm
[9] Ibid
[10] A. Ab Rahman and S. Mohamad, 'Analysis of *Tabarru* Principle in *Takaful* Contract', Malaysian Experience. Proceeding of 2010, (International Conference on Humanities, Historical and Social Sciences (CHHSS 2010) Singapore, 26-28 February, 2010)

are prohibitory under Islamic Law. Therefore, any actions which have the element of *riba* (usury), *gharar* (uncertainty), *maysir* (gambling) just like the case of conventional Health Insurance Scheme (NHIS) which is not compatible with the Islamic Law, as such, Muslims are prohibited from taking part in it[11]. The majority of Jurists have agreed that the practice of National Health Insurance Scheme (NHIS) is not in line with the business philosophy under *Shari'ah*, therefore not allowed. As I have earlier mentioned, National Health Insurance Scheme (NHIS) by the regulation guiding its operation has the above-mentioned elements, therefore, makes it unacceptable by the Muslim.

By the National Health Insurance (NHIS) Act[12] There are various provisions of the Act required to be complied with by the beneficiaries, which have gross effect on the Muslim faith. These provision ranges from i) Provision of maternity care for not more than four live births; this is an indirect way of compelling adoption of family planning. ii) Registration of only four children of the beneficiary. iii) A condition that the children must be biological children of the beneficiary. Another area of concern is the non-accountability or non-refund of the contribution of the beneficiary over the years in the event that such beneficiary does not receive any medical care for the years that he/she has subscribed to the scheme. Adherence to all these operational guidelines can lead to involvement of Muslims in forbidden elements; *Gharar* (uncertainty), *Riba* (usury) and *Maysir* (gambling). Avoidance of these elements is essential in an insurance system acceptable by Islamic Law[13]. *Takaful* is the boycott set up to avoid the conventional insurance system, it is a system of insurance based on brotherhood and joint risk bearing mechanism among the *Ummah.*[14]. Invariably, it is an agreement between a set of persons (s) to shoulder financial losses or the need of any of them by contributing funds.[15]. It could also be described as the *Shari'ah* based insurance wherein group of individuals mutually concede to taking up the finances of any of them against any loss or damage in relation to life.[16]. The Prophet (S.A.W) was narrated by *Abu Huraira* to have

[11] M. N. Shafique, N. Ahmad and H. Ahmad ,'A Comparative Study of the Efficiency of Takaful and Conventional Insurance in Pakistan,' I JAR, (Vol2. No. 5, [2015] p2

[12] National Health Insurance Act 2005

[13] Y.A Mu'az, and others, ' Nigerian National Health Insurance Scheme Under the Islamic Respective: A Literature Review', *Journal of Education and Social Science*. Vol. 6 [February 2017] ISSN 2289-1552 .

[14] Ibid

[15] Ibid

[16] M.A Kasaure, 'Extending the Theory of Planned behavior to explain the Role of awareness in accepting Islamic Health insurance (takaful) by microenterprises in northwestern Nigeria' *JIABR,*. Vol. 10. No.4 [2019]

said; Whosoever removes worldly hardship from a believer, Allah (s.w.t) will remove from him one of his hardships on the Day of Judgment. Whosoever relieve a believer's distress of the distressful aspect of this world, Allah will rescue him from a difficulty of difficulties of the hereafter.[17].

Islamic Health Insurance policy *Takaful,* embodies the concept of *Tabarru'* (donation) and may also take the form of *Waqf* (endowment), which makes it free from tendencies of involving in *Gharar* (uncertainty), *Riba* (usury) and *Maysir* (gambling). *Tabarru'* is the contribution made by one party voluntarily to deliver goods or services to another without due consideration or returns from the other party[18]. In *Takaful* policy, the participant makes a fund pool to be divided into two accounts. One for participants' saving, to be invested in a *halal* contract, and shall be available for collection, in addition to the profit made from the investment, in the event of termination of membership, or at the maturity stage of the contract. The other account is the *Tabarru'* fund, which on agreement shall be used or spent in rescuing members in case of any health challenges or losses[19].

2. MODUS OPERANDI OF NATIONAL HEALTH INSURANCE SCHEME

Health Insurance Scheme in Nigeria is put in place to cover the medical and surgical operating cost of an insured individual, based on the brand of health insurance subscribed to by such an individual. Health insurance is a situation where the healthy is rendering care to the sick by creating a periodic contribution of money to cater for the medical need of the sick when the need arises.[20]. The National Health Insurance Scheme pools regular contributions to the health care provider for specific health care services.[21]. It is this contribution that entitled the insured person, spouse, and four biological children under the age of 18 years to health care services.[22]. The overall purpose of establishing the National Health Insurance scheme (NHIS) is to ensure the health status of the citizen through financial protection and customer satisfaction, therefore, the Health Maintenance

[17]Sahih Muslim, Hadith 36.
[18] Ibid (n11)
[19] Ibid
[20] I.E Emelda, and O.O Charles, 'Relationship between enrollees' satisfaction of Health Needs and the Functions of HMOs in the National Health Insurance Scheme: A Case study of FCT, Abuja. KIUJH [2020] p72
[21] Ibid
[22] Ibid

Organization (HMO) should ensure National Health Insurance scheme (NHIS) subscribers derive satisfaction with the health service delivery and the cost implication is also on the lower side.[23].

However, it should be noted that high-risk diseases like cancer, hepatitis, heart disease, among others, which have high cost implications are not covered by the scheme. HIV patients are only entitled to counseling, health Education and treatment of simple Opportunistic infections[24]. An insured having been registered under the scheme, will affiliate himself with the NHIS accredited Health Maintenance Organization of his choice, who will provide him with a list of NHIS approved Health care Providers (public and Private). Under which the principal insured will register him/herself and dependants. Having done that, he will be issued with a personal identity number (PIN). In the event of sickness or medical attention is needed, the card will be presented to the chosen primary Health Care Provider for medical treatment. It should be noted that an insured will not be able to access medical attention until after 60 days, which is considered as a waiting period by the (NHIS) operational Guideline. It is said to be a documentation period. This time is unreasonably too long[25]. In practice, the insured will always pay 10% of every service received inclusive of drug dispensations, without which the insured will not be able to access medical attention[26].

3. FACTORS AFFECTING EFFECTIVENESS OF NHIS

As important and beneficial the scheme is to the masses of beneficiaries, and also overwhelmingly embraced by the majority, research has shown that it has suffered low patronage by the Muslim majority. This is due to a certain portion of the operational guideline of the scheme. One of the guidelines provides that maternity care can only be given to a maximum of four live births. Restricted the dependant beneficiary to the maximum of four, although there is a proviso that allows registration of more dependants upon payment of a prescribed fee, and that the children must be the biological children of the beneficiary[27]. Another area of concern is the non-accountability or non-refund of the contribution of the beneficiary over the years in the event that such beneficiary

[23] Ibid
[24] National Health Insurance Scheme (NHIS) Operational Guideline (2020)
[25] O. A Ayanleye, 'A Legal Appraisal of National Health Insurance Scheme in Nigeria'. *Journal of public and Private Law*, Faculty of law. Nnmadi Azikwe University, Awka, Vol. 5, [2013]. P8
[26] Ibid
[27] Ibid (n25) Para 1.1.1(1.1.1.4),

does not receive any medical care for the year. Furthermore, this scheme houses certain elements which their prohibition is fundamental under the *Shari'ah*, if they exist in any transaction entered into by a Muslim. These are: *Riba* (Usury), *Gharar* (Uncertainty) and *Mysir* (Gambling).

3.1 NHIS AND THE REGISTRATION OF ONLY FOUR BIOLOGICAL DEPENDANTS.

Looking at this from the perspective of the part of the world we belong to, we are African, where children of a brother are seen as that of another brother, children brought in by a woman into another marriage are seen as that of the new husband and so on. From the Islamic perspective, as soon as one assumes the care of any dependants, he/she is obliged to treat them as his/her own. The Prophet (S.A.W) said none of you is a believer until you want for your brother what you want for yourself.[28]. Dependants are expected to be given fear and equal treatment by their parent/guardian.[29]This feature of the National Health Insurance scheme is not acceptable under Islamic Law because of its discriminatory feature, the children are expected to be given equal treatment. In this case, any beneficiary that has more than four dependents will have to select just four out of whatever number of dependents he/she has. Islam warns against unequal treatment amongst people, even among one's children/dependants. Reason being that, such an act may amount to hatred amongst the dependants, or even result in ill treatment towards the parents in their old age, hence, it is crystal clear that the aftermath of this may be vital.[30]. It is a philosophy in the Islamic jurisprudence which states that, "repelling evil is preferable to securing a benefit. *(al-madarrah muqaddam alajalb al-manafi.*[31].

3.2 MATERNITY CARE OF ONLY FOUR LIVING BIRTH

This part of the operational guideline is a typical measure of advocating family planning. Islam is a religion that encourages massive procreation, if we take provision of means of sustenance as the yardstick for embracing family planning that will automatically render it contradictory to *Shari'ah*. Allah (SWT) says, 'Do not kill your children for fear of poverty; we give them sustenance and

[28] Hadith 13, 40 hadith of an-Nawawi
[29] S. Arfat, 'Islamic Perspectives of Children's Rights: An Overview' *ASIAN Journal of Social Sciences and Humanities*, Vol. 2, No. 1, [February 2013]
[30] Ibid
[31] S. Kayadibi, *Istihsan The Doctrin of Juristic Preference in Islamic law*. (Islamic Law Trust , Kuala Lumpur, 2010) p 40

yourselves (too); surely to kill them is a great wrong'[32]. Thinking in this direction will be like ascribing to oneself the power to provide sustenance to the children[33]. Sheikh Al-Azhari said, it is not Islamic to restrict the number of our children in fear of poverty, rather we should work hard and pray for Allah's mercy[34]. Allah (SWT) says; 'But when the prayer is ended, then disperse abroad in the land and seek of Allah's grace, and remember Allah much, that you may be successful[35]. Though family planning is not condemned under the Islamic Law, when it is on the health factor and not on the provision of sustenance[36]. In this regard, the restriction in procreation will be in the target to have a moderate family to fit in for the requirement of the scheme (NHIS), as such it is not a welcome idea under the Islamic Law. Islam is a religion that encourages massive procreation. On the authority of *Anas* from [*Al-Imam Ahamad ibn Hibban* who reported that the Prophet (S.A.W) said; 'marry the loving and productive women, I shall count on your number among the prophets on the Day of Resurrection'[37]

4. CONSTITUENTS OF ISLAMIC LAW VIS A VIS NHIS

4.1 *RIBA* (USURY)

Globally, hardly will any financial transaction be done under the conventional system without it having an atom of *riba,* for this reason, it is described as the blood in the body economy and development[38]. *Riba* is derived from the Arabic word *riba-wa* which means, to grow, to increase, to exceed, to be more than. Riba is defined as an undue increment in capital, for a kind of proceed which was not worked for. It is notoriously referred to as usury/interest, which has no corresponding value[39]. Further, it could be defined as the excess on the principal sum in the light of Islam[40]. From the perspective of another author, *Riba* in *fiqh* means an accumulation of excess

[32] Surah Al-Isra 17:31
[33] M.A Ambali, *The Practice Muslim Family Law In Nigeria*. (3rdedn, Princeton 2014) p 260
[34] Ibid
[35] Surah Jumua 62:10
[36] M.A Ambali *The practice of Muslim Family Law in Nigeria,* (3rdedn, Princeton 2014) p 260
[37] Ash- Shawkani, *A Comprehensive Islamic jurisprudence, Book of Nikah,* (Dakwah Corner Bookstore 2019) p 309 at 311.
[38] H.J Razali, *Islamic Law on Commercial Transaction,* (CERT publication 2009. Kuala Lumpur, Malaysia) p 149
[39] Ibid
[40] M. Semir, ' prohibition of Riba (Interest) and Insurance in the light of Islam', Vol. 21. No. 2, Islamic Research Institute, International Islamic University Islamabad available on https//www.jostor.org/stable/20847200. Accessed on 12/11/2021.

in the transaction or exchange of an asset[41]. In the *Shari'ah* legal terminology, it is defined as the excess, surplus, or increase[42]. In Law, this is obtainable in all economic sectors; Agric, trade, and commerce, and health have not been left out[43]. Under no circumstance will *Riba* be accommodated in any transaction under Islamic Law, this signifies that *Riba* is prohibited in all ramifications under the Islamic Law by the *Qur'an* and *hadith* of the noble Prophet (saw)[44]. Allah (s.w.t) in His glorious book admonished the believers to fear Him and neglect *Riba* if they are true believers[45]. Also, the prophet (S.A.W) in his farewell sermon said to the Ummah that all the *Riba* of *Al-Jailiyyah* has been annulled, and the first Riba that was annulled is our *Riba*. He further mentioned that *Riba* is prohibited because it is thought to have a bad impact on society[46]. It was also reported on the authority of Abdullah Ibn Mas'ud that the messenger of Allah said; Any community where usury and adultery become their way of life, the punishment of Allah is justified against them[47].

4.1.1 Relationship Between *Riba* (Usury) And Health Insurance

Conventional Insurance being the first to be introduced to the world has gained embrace by the most people, Muslim inclusive[48]. However, with the study of the Islamic scholars, it is revealed that conventional insurance involves *Riba*. Therefore, it is not allowed under the Islamic Law. Conventional insurance houses *Ribaal-fadl* in the sense that the insured does not get back exactly what has been contributed, he either gets more or less. This means that the insurance company will pay more than the insured has contributed in the event of catering for the medical expenses. Adversely, the company may not pay anything if the insured does not have any medical challenge. In this case, all the contributions made by the insured in anticipation of any medical challenge will now go to the pocket of the insurance company.

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[41] E, Erdem, 'Analyzing Gradual Revelation and wording of Riba (interest) in the Holy Qur'an, considering the commerce, Finance &Infaq System of Islam'. *Turkish Journal of Islamic Economics,* August, 2017.

[42] Y.Y Banbale*Islamic Law of Commercial and Industrial Transaction,* (Malthouse Law Books , 1st Publish 2007) p161

[43] Ibid

[44] R. A Abdurrahman, *The Philosophy of Islamic law of Transactions,* (CERT publication,. Kuala Lumpur, Malaysia, 2009) p124

[45] Surah Baqarah Ch2:278

[46] R. A Abdurrahman, *The Philosophy of Islamic law of Transactions,* (CERT publication,. Kuala Lumpur, Malaysia, 2009) p124

[47] Sahih Ibn Hibban, Hadith 4202

[48] KMZH Salim, 'Juristic View on Riba, Gharar and Qimar in Life Insurance'. *ICR Journal* [2016]. Available on icrjournal.org. p 206

4.2. *MYSIR* (GAMBLING)

This is referred to as a game of chance: it is derived from the Anglo-Saxon gamen and gama meaning sport or play[49]. This generally denotes the execution of a decision based on risk and uncertainty; it is playing a game of chance for money or taking risk for some unknown advantage. Gambling is best described in the economic as an activity which involves gain, loss, risk, and uncertainty[50]. However, these definitions are so narrow to the extent that it reveals that gambling is not only limited to game playing, but also relates to certain commercial activities[51]. So is its relationship with the subject matter of this research. Allah explicitly prohibits any form of gambling in the following words of His: They ask you about intoxicants and game of chance. Say: in both of them there is a great sin and means of profit for men, and their sins are greater than their profit. And they ask you as to what they should spend. Say: what you can spare. Thus does Allah make clear to you the communications that you may ponder'[52]. The Shaitan only desires to cause enmity and hatred to spring in your midst by means of intoxicants and game of chance, and to keep you off from the remembrance of Allah and from prayer. Will you then desist[53].A typical example of gambling is the uncertainty of the timing of the benefit of a pure life insurance[54].

4.2.1 NEXUS BETWEEN *MYSIR* (GAMBLING) AND HEALTH INSURANCE

Mysir, which means gambling as explained earlier, is a game of chance which both the insured and the insurance company are into. It often happens that one of the parties will benefit in the loss of another[55]. In the case of Health Insurance, the insured who has been contributing to the insurance company's pocket in preparation for medical peril, may not need medical attention, which is cost-impacting, they will lose to the insurance company as there will be no reimbursement of such fund by the insurance company[56]. On the other hand, if the insured needs medical attention, the

[49] H. Bin Salamon &others, 'Speculation: The Islamic Perspective; A Study on Al-Maisir (Gambling), Meditarranean' *Journal of Social Science,* Vol. 6 No. 1 MCSR Publishing January, [2015] p 4
[50] Ibid
[51] Ibid
[52] Surah Al-Baqarah 2:219
[53] Surah maeda. 5:91
[54] Uddin Md Akther *Islamic Finance: Prohibition of Riba, Ghara and mysir.* (*INCEIF,* Kualar Lumpur, Malaysia. October 2015). P5
[55] KMZH Salim, 'Juristic View on Riba, Gharar and Qimar in Life Insurance'. *ICR Journal* [2016]. Available on icrjournal.org. p 206
[56] Ibid p 210

insurance company will be the one to bear the huge cost, in addition to the token which the insured has been contributing to clear the medical cost implication, which makes a gain to the insured as against the insurance company[57]. However, in most cases, health challenges that have huge financial implications are not covered by the scheme, which means the insured rarely gain an edge over the insurance company. This invariably means that both parties are looking forward to a benefit which is far more than their various commitments/contribution. The implication is nothing but gambling and this is prohibited under the Islamic Law[58].

4.3 GHARAR (UNCERTAINTY)

In Islamic jurisprudence, Gharar is recognized as uncertainty[59]. It means uncertainty, risk, hazard, deception or misrepresentation. It includes exposing oneself or another, or one's property or another to jeopardy[60]. In proper definition, it means a state of being near to destruction or wreckage resulting from getting oneself involved in risk[61]. Scholars have proffered different definitions for *Gharar* based on their perception. According to Hanafi and Shafi' schools of thought, Gharar is defined as uncertainty over the existence of the subject matter of sale, further; it is viewed to mean doubtfulness or uncertainty, i.e not knowing the probability of occurrence of something[62]. In the opinion of scholars in the Zahiri School of thought, Gharar means ignorance of the unknown subject matter[63]. Al-Sarakhsi defines *Gharar* as a situation where the consequence of a thing is concealed[64]. *Gharar* and *Mysir* are two similar elements prohibited under Islamic transaction, both are nothing but hoping in the uncertainty. Therefore, it lies that the legality of prohibition of *Gharar* can be deduced from the words of Allah that say, 'O you who believe! Intoxicant and game of chance and (sacrificing to) stone set up and (dividing by) arrows are only an uncleanness, the Shaitan's work; shun it therefore that you may be successful[65]' 'The Shaitan only desires to cause enmity and hatred to spring in your midst by means of intoxicants and game of chance, and to keep

[57] Ibid
[58] M.M Billah, 'Islamic insurance (Takaful)', Selangor; Ilmiah Publishers Sdn. Bhd., [2003], p 63
[59] A. Al-Saati, 'The Permissible Gharar (Risk) in Classical Jurisprudence, *J.K.AU: Islamic Econ,* Vol. 16 No. 2 [2003], p6
[60] Ibid
[61] Ibid
[62] Ibid
[63] Ibid
[64] Ibid
[65] Surah Maeda. 5:90

you off from the remembrance of Allah and from prayer. Will you then desist? Furthermore, some scholars have also deduced the prohibition of *Gharar* buy liking it with *Al-Batil* (vanity) as mention in the *Qur'an*; 'And do not swallow up your property among yourselves by false means, neither sees to gain access thereby to the judges, so that you may swallow up part of the property of men wrongly while you know[66]". In addition, the Prophet (SAW) does forbid many transactions during his lifetime, when he sees that there is an atom of uncertainty, it. E.g. purchase of an unborn animal in the mother's womb, the sale of milk in the udder without measurement, the sale of war booties before sharing[67].

4.3.1 RELATIONSHIP BETWEEN *GHARAR* (UNCERTAINTY) AND HEALTH INSURANCE

Gharar being essentially a means of benefit based on risk and uncertainty, it is an element prohibited by Islamic Law. Though human life is full of risk and uncertainty, notwithstanding, it is not a yardstick to make lawful what has been prohibited under the Islamic Law[68]. Partaking in the conventional Health Insurance will subject one to involvement in *Gharar*, because the scheme is designed to cater for an unknown event, an event whose occurrence is not certain. Notwithstanding its uncertain feature, the beneficiary, who is the insured, will be made to make contribution of a certain sum of his earnings in the preparation for the occurrence of an event which is not certain. In the event that the insured or any of his dependents needs medical attention that falls on a high financial cost implication, the insured will only pay a certain percentage and the company will bear the huge part of it, and that brings a gain to the insured as against the insurance company.[69]. In the reverse, if there occurs neither the insured nor the dependants need medical attention, the insured will be losing to the company, because there will be no make up for the sum he has been contributing.[70]. Though human beings are prone to one kind of sickness of the order, notwithstanding that, no one can say this is the time it can occur, and this uncertainty renders the scheme to be inconsistent with the Islamic Law.[71].

[66] Surah Al-Baqarah. 2:188
[67] Ibid (n55) P4
[68] Ibid (n56) 208
[69] Ibid
[70] Ibid
[71] M.M Billah *Islamic insurance (Takaful),* Selangor; (Ilmiah Publishers Sdn. Bhd, 2003), p 45

5. MEANING AND DEFINITION OF *TAKAFUL* (ISLAMIC INSURANCE)

The term *Takaful* is an infinity noun which is derived from the Arabic root verb *Kafala, Kafaala*, or *Akfal*[72]. Meaning 'to guarantee' or to support'. Takaful is also Arabic word meaning 'guaranteeing each other' or 'joint guarantee'[73]. In the same vein, *Takaful* is define as a shared-responsibility, joint-guarantee, mutual security, joint indemnity, mutual assurance or surety and cooperative assurance. Looking at the *Takaful* concept from the literal point, it means mutual assurance or taking joint responsibility[74].

5.1. ORIGIN AND LEGALITY OF *TAKAFUL* UNDER *SHARI'AH*

The concept of *Takaful* Islamic insurance has been in existence since ancient times before the advent of Islam among the people of the past[75], and has gotten its justification from the glorious *Qur'an* as a concept of cooperation, brotherhood, solidarity and cooperative help, '…Cooperate in righteousness and piety…' are the words of the glorious Qur'an[76]. Also the prophet (S.A.W) approved of it. It was referred to as the Aqila system. It is a system practiced among the Muslims of Mecca and Madinah which involved mutually helping and sharing in the financial burden of another. This is done without seeking any contractual payment and it is not commercial[77]. This system is practiced based on brotherhood and mutual responsibility to contribute to the interest of the needy as the need arises. An example of it can be deduced from the contributions made by the paternal relative of an accused person to pay the *Diya* (blood money) to the relatives of the victim in case of unintentional killing involving two different tribes[78]. This has been the practice amongst the companions of the prophet (S.A.W). In the modern world, Takaful has gone beyond relatives helping or sharing one another's responsibility, but has grown to cooperate with social work, to help friends and neighbors in big financial difficulties[79]. Islam, being an advocate of charity and mutual assistance, shows that *Takaful* is not

[72] Y.Y Bambale , *Islamic Law of Commercial and Industrial Transaction,* (Malthouse Law Book 2007).
[73] Ibid
[74] Ibid
[75] M. B Aliyu and I. M Ahmad '*Shari'ah* Compliant insurance Product: An Appraisal of Problems and prospect of Takaful-insurance in Nigeria', *UnilorinShari'ah Journal*, Vol.2 No.1 [June 2014]
[76]surah Maaidah vs 2
[77] S. Zainuddin and I.N Md Noh, *An Overview of the Emergence of Takaful: An Islamic type of Insurance Policy, Journal of Business and Economics Research* 2013, P112. Available on (http://www.sciencepublishinggroup.comij/ijber) accessed on 1/1/24
[78] Ibid
[79] Ibid

strange and not in any way conflict with *Shari'ah*. Allah says help yourself in righteousness and piety but not in sin and rancor, so fear Allah for He is strict in punishment[80]. Therefore, *Takaful* scheme (relying on the principles of cooperation) aims at undertaking a joint-responsibility towards material safeguarding for the widow, orphans, helpless ones in the society, and the ones who face unexpected losses or damage to property resulting from unpredicted happenings[81]. Allah (s.w.t) in His word has indeed encouraged us to seek a better life in this world and the life after[82]. The Qur'an says '… our Lord has given us comfortable life in both this world and the hereafter…[83]. It suffices to say that having an insurance policy will promote cooperation, build brotherhood and very strong solidarity[84]. The *Takaful* Act 1984 (Malaysia) in trying to analyze the rationale behind establishment of *Takaful* provides; 'it is a scheme based on brotherhood, solidarity and mutual assistance, which provide for mutual financial aid and assistance to the participants in case of need, whereby the participant mutually agreed to contribute for the purpose'[85].

5.2. OPERATION OF TAKAFUL

Takaful Islamic Insurance operates with the use of *Tabarru'* (donation) method. *Tabarru'* is the equivalent of premium; the amount payable by a participant to an operator under a *Takaful* contract.[86]. This method is more apparent in the general *Takaful.* The participant will contribute to be managed by the *Takaful* operator.[87]. These contributions (pool of funds) will be divided into two separate accounts, one will be the participant account (savings account), and the other will be the participant special account (*Tabarru'* account)[88]. The sum in the participant's *Tabarru'* account as undertaken by the participants is normally regarded as a donation to fellow participants in the event of any loss.[89]. However, if at the end of the specified period there was no need for the donated sum or it was not exhausted, the *Takaful* operator will share the surplus with the participant.[90].

[80] Surah Maeda 5:2
[81] Ibid (n77)
[82] Ibid p 43
[83] Surah Al-baqarah 2:201
[84] Ibid (n77)
[85]Section 2 of Takaful Act 1984 (*Malaysia*)
[86] Sec. 3.0 Takaful Operational and Registration Guideline 2015
[87] Ibid (n79)
[88] Ibid
[89] Ibid
[90] Ibid

However, if the Tabarru' fund is not sufficient to cater for the claim of any participant, no recourse will be made to the participant's saving account, but the Takaful operator will grant a temporary interest free loan (*Qard Hasan*) to cover the deficiency, and this will be paid back in the future surplus.[91]. This serves as an incentive for the operator to properly manage the fund. The *Tabarru'* account is to meet the loss of the fellow participant in any event of loss or peril; the participant will be compensated based on the pre-agreed formula. If the death of the participant occurs before the specified term or period of the *Takaful* contract, the family of the deceased will get the amount in the participant's account as if he continued contribution until the end of the *Takaful contract.*[92]. However, if the participant withdraws before the end of the specified period, they only get the amount in the participant account.[93].

6. *TABARRU'* AND *WAQF* AS A TOOL FOR OPERATING *TAKAFUL*

Tabarru'(donation) is the equivalent of premium; the amount payable by a participant to an operator under a *Takaful* contract.[94]. This method is more apparent in the general *Takaful.* The participant will contribute to be managed by the *Takaful* operator.[95]. These contributions (pool of funds) will be divided into two separate accounts, one will be the participant account (savings account), and the other will be the participant special account (*Tabarru'* account)[96]. The sum in the participant's *Tabarru'* account as undertaken by the participants is normally regarded as a donation to fellow participants in the event of any loss.[97]. However, if at the end of the specified period there was no need for the donated sum or it was not exhausted, the *Takaful* operator will share the surplus with the participant.[98]. However, if the *Tabarru'* fund is not sufficient to cater for the claim of any participant, no recourse will be made to the participant's saving account, but the Takaful operator will grant a temporary interest free loan (*Qard Hasan*) to cover the deficiency, and this will be paid back in the future surplus.[99]. This serves as an incentive for the operator to

[91]Safder Jaffer and others 'Takaful (Islamic Insurance): Concept, Challenges, and opportunities'. (Milliman, November, 2010) p13.
[92] Ibid (n79)
[93] Ibid
[94] Ibid (n88)
[95] Ibid (n79)
[96] Ibid
[97] Ibid
[98] Ibid
[99] Ibid (n101)

properly manage the fund. The *Tabarru'* account is to meet the need of the fellow participant in any event of loss or peril; the participant will be compensated based on the pre-agreed formula. If the death of the participant occurs before the specified term or period of the *Takaful* contract, the family of the deceased will get the amount in the participant's account as if he continued his contribution until the end of the *Takaful.*[100]. However, if the participant withdraws before the end of the specified period, they only get the amount in the participant account.[101]. This is how *Takaful* is being operated under the *Shari'ah*, however, Waqf could also be adopted, which to some scholars, is the best method that can completely remove *Gharar* in the *Takaful* operations[102].

7. DEFINITION OF *WAQF* (ENDOWMENT)

Waqf (endowment) is generated from the root word *wa-qa-fa*, it is literally defined to mean, to stop, to put to rest, to suspend, to retain or to detain something[103]. Technically, according to Ibn *Qudamah* of the *Ambali* school of thought, *waqf* is defined to mean the retention of a thing which itself is the origin, and donate its usufruct for the benefit of others[104]. In the *Maliki* school of thought, it is the act of donating the usufruct of a thing for the benefit of another while the thing itself still exists, and the ownership of it remains with the owner even if it is virtual[105]. The *Shafi'* school definition of *waqf* is different from that of other schools. It is defined to be detention of property which might be used, but its corpus remains by withdrawing the right of disposition on it, delivered to an existing and permissible objection[106]. For the *Hanafis*, *waqf* means the retention of a particular property by the owner still having the title, but only to the profit or usufruct of such property for charitable purpose[107].According to *Ibn*' *Arafah,*it is the donation of accumulated benefit or usufruct of a property of a person, whose ownership of such property is not actual[108]. In the view of Sayyid Sabiq it is the retention of the proceeds of a property and devoting it to the

[100] Ibid (n79)
[101] Ibid
[102] Ibid (n101) p15.
[103] M,A Adam, 'Towards an effective Investment in Properties in Nigeria', Proceeding of the (International Conference on Masjid, Zakat and Waqf , Kuala Lumpur, Malaysia IMAF2014). P116
[104] R. A. H Abdurrahman, *philosophy of Islamic law of Transactions* (CERT publication 2009. Kuala Lumpur, Malaysia) p177
[105] Ibid
[106] Ibid
[107] Ibid
[108] Ibid (37) p 412

course of Allah[109]. *AbubakarJibrilAl-Jazairi* defined it as the withholding of proceeds of a property, the property which ceases to be subject of inheritance or being sold. The proceeds of such property are to be solely expended on the course upon which it is endowed[110].

From the above definition of the various schools of thought, it implies that *Waqf* is the setting aside of a property in perpetuity by the owner, without giving it to a particular person, but to use the usufruct of such property as charity for another. The property ceases to be part of the donor's other properties, subject to inheritance after his demise; as such, it can neither be sold nor be inherited by his heirs.[111]. In Waqf, title/ownership of property involved is not transferred to any human being but the Almighty.

8. CONCLUSION

This paper elucidates on the operational mode of Health Insurance Scheme (NHIS) under the conventional system as it operates in Nigeria, *vis a vis* its inconsistency with the provision of Islamic Law. It has been established that the scheme is neither acceptable nor condemned; this is due to its involvement in *riba* (usury), *Gharar* (uncertainty, and *Mysir* (gambling). All these were explained vis a vis their relationship with the NHIS. However, the scheme haven not been entirely condemned, Islamic Law has put in place mechanism through *Tabarru'* and Waqf, to serve the same purpose that to serve, which is to mitigate hardship on people when it comes to financial expenses incurred through loss and medical care assessment, through a method or mechanism devoid of any prohibitory element as contained in the conventional insurance. Therefore, if *Tabarru'* and *Waqf* are adopted as a method of operating Health Insurance, it will benefit the masses generally, because the foundation benefit of *Waqf* is meant to benefit anyone in need and not necessarily the rich or poor. It goes down to the grass root, to serve people who are seriously in need. Under the conventional Insurance practice, what is obtainable in operation is sales and purchase which account for its involvement in *riba* (usury), *Gharar* (uncertainty, and *Mysir* (gambling). From the effort of this research, it is hereby recommended that the sale and purchase

[109] Ibid
[110] Ibid
[111] Ibid

contract policy, which accounts for the prohibition of the conventional Insurance practice, be substituted with *Tabarru' (*donation) and *waqf* (endowment).

THE IMPACT OF OIL SPILLS ON FOOD SECURITY: ADDRESSING NIGERIA'S LEGAL AND INSTITUTIONAL FRAMEWORK

Vivian Ijeoma Uzoma*

Abstract

Oil pollution is one of the most pressing environmental challenges in Nigeria, particularly in the Niger Delta, where crude oil exploration and production have led to widespread land and water contamination. This environmental degradation has had severe socio-economic consequences, particularly in food security. Farmers and fishermen, who rely on natural resources for their livelihoods, face declining yields, soil infertility, and the destruction of aquatic habitats due to frequent oil spills. The pollution of water bodies and farmlands has resulted in reduced agricultural productivity, increased food prices, and heightened economic hardship for affected communities. The paper adopts doctrinal method of legal research in examining the existing legal and institutional framework for control of oil spillage in Nigeria. The paper finds that despite the existence of regulatory frameworks such as the Petroleum Act, the National Oil Spill Detection and Response Agency (NOSDRA) Act, and the Oil Pipelines Act, weak enforcement has allowed oil companies to evade accountability. Regulatory agencies such as NOSDRA and the National Environmental Standards and Regulations Enforcement Agency (NESREA) face significant operational challenges including inadequate funding, lack of independence, and overlapping mandates that hinder effective oversight of oil pollution. Moreover, the exclusion of NESREA from monitoring activities within the oil and gas sector further weakens environmental governance. The paper recommends that legal reforms are necessary to impose stricter penalties for oil spills, enhance the independence of regulatory bodies, and recognize food security as a justiciable right under Nigerian law. The paper recommends further that the government must mandate oil companies to contribute to an environmental remediation fund, promote sustainable agricultural practices, and empower local communities to participate in environmental monitoring. The paper also recommends strengthening of the Nigerian environmental laws and policies as crucial way to mitigate the impact of oil pollution on food security and ensuring sustainable development in oil-producing regions.

***Key words**:* Oil Spill, Food Security, Legal Framework, Institutional Framework, Gaps in the Framework

1.0 INTRODUCTION

There is no doubt that the world we live in today is vastly different from primitive times when humans coexisted harmoniously with nature and their surroundings. Back then, waste generation and disposal were not major concerns. However, with humanity's large-scale domination of nature, the natural mechanisms for waste disposal have been disrupted. As a result, humans are now

responsible not only for producing their food, tools, and conveniences but also for managing waste, including highly toxic substances.[1] The water available for consumption is increasingly impure, contaminated with chemicals and hazardous substances, leading to a steady decline in both its quality and volume. Food production has drastically declined, and what remains is tainted with toxic, hazardous, and even carcinogenic elements. More so, the prevalence of environmentally induced diseases has become a growing concern. This is the reality of today's world—one shaped by self-inflicted environmental destruction, particularly in the oil and gas industry, under the guise of development and energy exploration.[2]

In Nigeria, crude oil exploration dates to 1908, with the first discovery recorded in the Araromi area of Ondo State.[3] Later, in 1946, Shell D'Arcy, now known as Shell Petroleum Development Company (SPDC) of Nigeria, discovered oil in Oloibiri. Commercial oil production in the Niger Delta commenced in 1958 after crude oil was discovered at Oloibiri by Shell British Petroleum (now Royal Dutch Shell) in 1956.[4] While oil discovery has generated substantial revenue for Nigeria, it has also brought relentless environmental degradation and deepened poverty, particularly for the people of the Niger Delta.

As Nigeria's primary oil-producing area, the Niger Delta witnesses the extraction of large quantities of crude oil daily, with severe cases of oil spills reported frequently.[5] Many residents, primarily farmers and fishermen/women, struggle with the twin challenges of underdevelopment and restricted access to essential services such as clean drinking water, healthcare, and quality education.[6] Oil extraction has further worsened conditions in the region by contaminating natural water bodies (streams, rivers), disrupting aquatic habitats, and destroying farmlands and mangrove

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[1] A Uchegbu, 'The Legal Regulation of Environmental Protection and Enforcement in Nigeria' *Journal of Private & Property Law*, (1988/89) 58.

[2] NG Ikpeze, 'The Environment, Oil and Human Rights in Nigeria', *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, (2011) 2, 88

[3] BO Oshwofasa, DE Anuta, and JO Aiyedogbon, 'Environmental Degradation and Oil Industries Activities in the Niger Delta Region', *African Journal of Scientific Research (AJSR),* (2012) 9 (1) <http//www.journalsbank.com/index> Accessed 1 November 2017.

[4] Ibid.

[5] SO Aghalino, 'Petroleum Exploitation and the Agitation for Compensation by Oil Producing Communities in Nigeria' *GeoStudies Forum* (2002) 11-20.

[6] ibid.

ecosystems.[7] One of the critical areas impacted by oil spills is food security. In 2017, the Food and Agriculture Organization (FAO) and other international bodies reported that approximately 815 million people worldwide suffer from hunger, translating to 11% of the global population experiencing chronic hunger or undernourishment.[8] Food security is achieved when all individuals have consistent physical, social, and economic access to adequate, safe, and nutritious food that meets their dietary requirements and preferences for a healthy and active life.[9] It encompasses food availability and accessibility but, more importantly, food affordability.[10]

In situations where these three conditions are not met, there is food insecurity. The connection between hunger and oil spill lies in the disruption of natural systems and resources essential for food production. Oil Spills contaminates soil, water, and air, which directly impacts agricultural yields, food safety, and the livelihoods of communities dependent on farming and fishing. This disruption creates a ripple effect, reducing the availability, accessibility, and quality of food, thereby intensifying hunger and food insecurity.

It is for this reason that this article intends to show that oil spill with the resultant chemicals and toxins released into the environment affects food security negatively; thereby creating a need to analyse and review the legal framework governing oil spillage and its effects on food security. There are various laws that have been enacted to combat oil spillage and institutions saddled with the responsibility of monitoring and cleaning up oil spillages. However, these laws have not adequately ensured food security especially as it is affected by oil spills, neither have the institutions lived up to expectation. This work will analyse the existing laws and advocate for their review to fight food insecurity caused by oil spillage.

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[7] NS Olaniran, 'Environment and Health: An Introduction' in Olaniran, N.S. *et. al* (Eds.) *Environment and Health*. (Macmillan: Lagos. 1995), 34-151.

[8] Food and Agriculture Organization, International Fund for Agricultural Development, UNICEF, World Food Programme & World Health Organization. (FAO, IFAD, UNICEF, WFP & WHO). (2017). The State of Food Security and Nutrition in the World 2017: Building resilience for peace and food security. Rome. FAO. ISBN 978-92-5-109888-2. Retrieved from http://www.fao.org/3/a-I7695e.pdf.

[9] FS Idachaba, 'Strategic and Policies for Food Security and Economic Development in Nigeria. Abuja: CBN' in TA Amusa, CU Okoye, and AA Enete, *A Review of Economic and Food Security Implications of Critical Environmental Challenges on Nigerian Agriculture in Chukwuemeka Okoye and Daniel Abah, Dynamics of Natural Resource and Environmental Management in Nigeria: theory, practice, bureaucracy, advocacy* (Debees Printing and Publishing Company, Nsukka, Enugu State, Nigeria, 2018) 290-312

[10] Ibid.

2.0 CONCEPT OF OIL SPILL AND FOOD SECURITY

An oil spill occurs when liquid petroleum hydrocarbons are discharged into the environment. This term encompasses spills that take place in oceans, coastal waters, rivers, or on land.[11] While oil spills can happen at different stages of petroleum handling—from exploration and production to refining, distribution, and marketing—at least 96% of these spills are linked to the exploration and production phases, making them predominantly localized in oil-producing areas.[12]

Food security refers to the availability, accessibility, acceptability, and affordability of food.[13] According to the Rome Declaration on World Food Security, food security exists when food is consistently available, all individuals have access to it, and it is nutritionally sufficient in terms of quantity, quality, and variety while being culturally acceptable.[14] It ensures that all people, at all times, have physical, social, and economic access to enough safe and nutritious food to meet their dietary needs and preferences for a healthy and active life.[15] The four core dimensions of food security include the availability of nutritious food, the financial and physical ability to obtain food, the efficiency of food utilization, and the sustainability of these factors.[16] Food security is essential for human survival, contributing to good health, labour productivity, and economic growth.[17] Its absence can lead to hunger, malnutrition, political instability, and an overreliance on food imports, negatively impacting a nation's economy.[18]

3.0 CAUSES OF OIL SPILL IN NIGERIA

It is reported that in Nigeria, fifty per cent (50%) of oil spills are caused by corrosion, twenty-eight per cent (28%) by sabotage, and twenty-one per cent (21%) by oil production operations.[19] One

[11] Institute of Marine Affairs, Trinidad and Tobago

[12] KBO Ejumudo and FO Nwador, Environmental Management and Sustainable Development in Nigeria's Niger Delta, *Journal of Economics and Sustainable Development*, (2014), 5 (15) 35.

[13] OS Enilolobo, *et al*, 'Determinants of Food Security' *ACTA UNIVERSITATIS DANUBIUS ECONOMICA (AUDOE)* (2022) 18 (3) 193-209

[14] J Clover, (2003). 'Food Security in Sub-Saharan Africa' <https://www.researchgate.net/publication/272123749> accessed 24 January 2025

[15] FAO *State of Food and Agriculture (SOFA). Livestock in the balance*. (FAO, Rome, Italy, 2007).

[16] AMM Irfeey, *et al*, 'Groundwater Pollution Impact on Food Security' *Journal of Sustainability*, (2023) 15 (4202) 2.

[17] PO Agbola, 'Factors influencing food security among small farmers in Nigeria' *African Journal of Agricultural Research,* (2014) 9(27) 2104-2110.

[18] K Havas, & M Salman, Food security: its components and challenges. *Int. J. Food Safety, Nutrition and Public Health,* (2011) 4(1) 25

[19] PC Nwilo and OT Badejo, *Impact of Oil Spill along the Nigerian Coast, Contaminants, Soil sediments and Water* (Kluver Publishers, the Netherlands, 2001) 44-49

per cent (1%) of oil spills result from engineering drills, failure to effectively control oil wells, machinery breakdowns, and insufficient care in loading and unloading oil vessels.[20] Thousands of barrels of oil have been discharged into the environment through the country's oil pipelines and storage tanks. This spillage is largely due to the lack of regular maintenance of pipelines and storage facilities, many of which have been in use for decades without replacement.[21] Sabotage is another significant cause of oil spills in Nigeria. Some Nigerian citizens, in collaboration with individuals from other countries, engage in oil bunkering, deliberately damaging and destroying oil pipelines to steal crude oil. Oil spills may originate from crude oil transported by tankers; offshore platforms, drilling rigs, and wells; improperly sealed wells; pipeline and storage tank leaks; waste or discarded oil; natural seepage; as well as spills of refined petroleum products such as petrol, diesel, bunker fuel, and their by-products.[22] In Nigeria, oil spills frequently occur due to pipeline vandalism, blowouts at wellheads, waste discharge, refinery effluents, or the construction of flow stations near residential communities.[23]

4.0 THE LEGAL FRAMEWORK GOVERNING FOOD SECURITY IN NIGERIA

Nearly 60% of annual deaths worldwide—around 36 million—are directly or indirectly caused by hunger and nutritional deficiencies.[24] Over 840 million people globally suffer from malnourishment,[25] with more than 95% residing in developing countries.[26] Among them, 153 million are children under the age of five.[27] What is even appalling is that, according to a FAO commissioned study, roughly one-third of the edible parts of food produced for human consumption, gets lost or wasted globally, which is about 1.3 billion ton per year.'[28] As stated earlier, oil pollution has been identified as one of the factors that affect food production and food security. The pollution of different aspects of the environment affects food availability and

[20] Ibid
[21] Ibid
[22] Ibid
[23] O Oluduro, and E Durojaye,. 'The Implications of Oil Pollution for the Enjoyment of Sexual and Reproductive Rights of Women in Niger Delta Area of Nigeria' *The International Journal Of Human Rights,* (2013) 17 (7-8) 772-795
[24] This figure includes deaths that result from "nutritional deficiencies, infections, epidemics or diseases which attack the body when its resistance and immunity have been weakened by undernourishment or hunger." UNDP, *Human Development Report* (2000).
[25] Care USA, Facts about Hunger, <http://www.careusa.org/campaigns/world-hunger/facts.asp>. Accessed 22/2/25
[26] Ibid
[27] Ibid
[28] J Gustavsson, *Global Food Losses and Food Waste: Extent, Causes and Prevention*, (FAO, Rome, 2011) 4

accessibility in one way or the other. The former section examined the laws governing oil pollution. In this section, we shall examine laws governing food security in Nigeria.

The recognition of the right to food as a fundamental human right dates to the early years of the United Nations. Even before its establishment, American President Franklin D. Roosevelt highlighted this issue in his January 1941 State of the Union address, famously known as the Four Freedoms speech, where he introduced the concept of "freedom from want."[29] This vision laid the groundwork for the Universal Declaration of Human Rights (UDHR), which formally acknowledged the right to food under international law.[30]

4.1 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR) 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 transformed the right to food from a principle under the UDHR into a legally binding obligation for signatory states. Article 11 of the ICESCR is the cornerstone of this right, recognizing both the right to adequate food[31] and the right to be free from hunger.[32] While the former is a relative standard, the latter is an absolute and fundamental right in both the ICCPR[33] and the ICESCR.[34]

Member states are required to take action, both independently and through global partnerships, to gradually achieve food security by enhancing agricultural productivity, preserving food resources, optimizing distribution systems, and promoting fair access to food worldwide.[35] The three-tier obligation under the ICESCR requires states to respect (refrain from obstructing access to food), protect (prevent third-party interference), and fulfil (facilitate and provide access to food security).[36] A state's failure to meet these obligations constitutes a violation unless it proves that resource constraints and unsuccessful international assistance requests hindered compliance.[37]

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[29] I Rae, *et al*, 'The Right to Food as a Fundamental Human Right: FAO's Experience' in B Guha-Khasnobis, *et al*, (eds), *Food Insecurity, Vulnerability and Human Rights Failure* (Palgrave Macmillan, New York 2007) 266

[30] Ibid

[31] ICESCR Art. 11

[32] Ibid. Article. 11(2)

[33] The ICCPR implies a right to food as part of the fundamental right to life found in Arti 6. *See* U.N. FAO 'Implications of the Voluntary Guidelines for Parties and Non-Parties to the International Covenant on Economic, Social and Cultural Rights'< http://www.fao.org/docrep/meeting/007/j1632e.htm> accessed 1 January 2025

[34] S Narula, 'The Right To Food: Holding Global Actors Accountable Under International Law' *Columbia Journal of Transnational law* (2006) 44, 691

[35] Ibid

[36] CESCR General Comment No.12, para. 15

[37] General Comment No.12, para. 17

Despite broad recognition, implementation remains weak, with states bearing primary responsibility for enforcement gaps. The ICESCR entered into force in 1976, and Nigeria ratified it on October 23, 1993.[38] However, a significant limitation is that Nigeria has not domesticated the treaty, raising questions about its legal enforceability. Additionally, under the doctrine of privity of contract, individual Nigerian citizens cannot directly enforce the government's treaty obligations.[39]

Furthermore, Article 2 of the ICESCR tempers the enforceability of the right to food by limiting state duties to progressive realization based on available resources. This clause weakens the expansive promise of an adequate food guarantee, as states can cite resource constraints to justify non-compliance. Consequently, while the ICESCR establishes the legal framework for the right to food, practical enforcement remains a challenge.

4.2 THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC)

This convention was adopted and opened for signature and ratification by the General Assembly (GA) Resolution 44/25 of November 1989; and entered into force on 2nd September 1990 in accordance with Article 49.[40] The UNCRC was ratified by Nigeria in 1991.[41] The UNCRC is largely recognised as the leading UN instrument dedicated to the protection of the rights of a child; it is the first legally binding international instrument that recognises, affirms and asserts the rights of a child.[42] The UNCRC reinforces the right to food as part of a child's right to health. Article 24 obliges states to combat malnutrition and disease by ensuring access to adequate, nutritious food through primary healthcare and available technologies.

[38] O Ajigboye, 'Realization of Health Right in Nigeria: A Case for Judicial Activism' *Global Journal of Human Social Science: F Political Science*, (2014) 14 (3) 29

[39] In simple terms, the doctrine of privity of contract connotes that generally no one would be entitled to or be bound by the terms of a contract to which he is not a party. *See, Price v. Easton* (1833) 4B & Ad. 433, and *Tweedle v. Atkinson* (1861) 1B&S 393.

[40] C Cohen, 'The Role of Non-Governmental Organisations in drafting of the Convention on the Rights of the Child' <www.savethechildren.org>. accessed on 17th March 2021, 137.

[41] UNICEF NIGERIA-FACT SHEET', <www.unicef.org/nigeria/childs_rights_legislation_in_nigeria.pdf.> Accessed 3/3/21.

[42] UNICEF: 20 years of the CRC. <http://www.unicef.org/rightsie/237.htm>. Accessed 7/3/21.

4.3 FOOD CONFERENCES

In 1974, the World Food Conference[43] held and world leaders resolved that by 1984, "no child will go to bed hungry, no family will fear for its next day's bread, and no human being's future and capacities will be stunted by malnutrition."[44] However, hunger did not disappear by 1984. Decades later, the grim reality is that more people face uncertainty about their next meal than in 1974, despite the world becoming significantly wealthier and producing surplus food. In industrialized countries, overproduction driven by agricultural subsidies, especially in the U.S. and the EU, has resulted in challenges like "food mountains" and "drink lakes."[45] In contrast, many poorer nations continue to suffer from underproduction due to limited technology, environmental pollution and agricultural inputs.

In 1996, world leaders gathered again at the World Food Summit in Rome,[46] expressing anger at the ongoing global hunger crisis, which left over 800 million people without sufficient food. Unlike the 1974 conference, where food production was the primary focus, the 1996 summit acknowledged that the true issue lay in access to food rather than availability.[47] Despite pledges to halve global hunger within two decades, progress has been minimal. As 2015 (which was the target

[43] The World Food Conference was convened pursuant to UN General Assembly Resolution 3180 (XXVIII) of 17 December 1973, with a view to 'developing ways and means whereby the international community as a whole would take specific action to resolve the world food problem within the broader context of development and international economic cooperation.' The Conference adopted the Universal Declaration on the Eradication of Hunger and Malnutrition and twenty resolutions, which were endorsed by General Assembly Resolution 3348 (XXIX) of 17 Dec 1974. See Report of the Conference, E/CONF.65/20 (1975), or U. N. Publication, Sales No:E.75.II.A.3 (1974)

[44] This much quoted statement that 'within a decade no child will go to bed hungry…'was first made by then USA Secretary of State, Henry Kissinger. But subsequently, it was incorporated into the first Resolution adopted by the Conference regarding objectives and strategies of food production, which set the target of eradicating hunger and malnutrition within a decade's time. From technical point of view, the declaration was hardly unrealistic, as it was buttressed by empirical evidence that 'society already possesses sufficient resources, organizational ability and technology and hence the competence to achieve [the] objective,' as reaffirmed by the Declaration.

[45] Yigzaw, Destaw, Hunger and the Law: Rethinking the Right to Food (November 20, 2011). Available at SSRN: <https://ssrn.com/abstract=1962391> or http://dx.doi.org/10.2139/ssrn.1962391

[46] Food is not the exclusive domain of human rights law. The issue cuts across various spheres of contemporary international law. A wide range of international regimes and institutions involved in food production, innovation, trade, distribution, and so on, play a role in the realization of the right to food. Accordingly, not only heads of States, but also leaders of IMF, ILO, WTO, United Nations Population (UNFPA), United Nations Environment Programme (UNEP), United Nations Population Fund (UNFPA), World Metrological Organization (WMO), United Nations Industrial Development Organization (UNIDO), International Atomic Energy Agency (IAEA), and others attended the 1996 World Food Summit.

[47] The World Food Summit that was held from 13-17 November 1996 was concluded with the adoption of the Rome Declaration on the World Food Security and the World Food Summit Plan of Action.

year) approached, the number of people experiencing hunger had increased since 1996. Commitments to combat hunger have been largely ignored, lacking concrete follow-up mechanisms, and are nonbinding. While world leaders reaffirmed the fundamental right to access adequate and nutritious food, ambiguity about the right's precise meaning persisted.

4.4 THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, (AS ALTERED)

On the local level, the right to food and food security is enshrined as a primary goal of state policy in Nigeria's 1999 Constitution (as amended in 2023). Section 16(a) mandates the government to ensure food availability, affordability, and accessibility. However, the non-justiciable nature of Chapter 2 of the Constitution under Section 6(6)(c) limits the enforceability of this right. By contrast, countries like Kenya, South Africa, and India have incorporated enforceable provisions on the right to food in their constitutions. Although the right to food in Nigeria is not explicitly justiciable, it can be linked to the constitutional right to life under Section 33. The right to life includes freedom from hunger and starvation, as interpreted in cases such as ***Gbemre V Shell Petroleum Development Company Of Nigeria Ltd.***[48] Furthermore, international legal instruments ratified by Nigeria, such as the UDHR and ICESCR, can be enforced domestically under Section 12 of the Constitution. These frameworks impose obligations on the government, individuals, organizations, and corporations to address food insecurity and mitigate environmental pollution.

Nigeria has also made various attempts to increase food production through programs such as the Nationally Coordinated Food Production Programme, Operation Feed the Nation, and the Agricultural Development Projects, among others.[49] Despite these efforts, food security in Nigeria has remained a pressing challenge, exacerbated by oil pollution. Some recent policies governing Nigeria's agricultural sector are the Agricultural Transformation Agenda (ATA) and the Agriculture

[48] *Jonah Gbemre v Shell Petroleum Development Company of Nigeria and 2 Others*, Unreported Suit No. FHC/B/CS/53/05, delivered on 14 November 2005

[49] Nationally Coordinated Food Production Programme (NAFPP, 1972, Gowon); Operation Feed the Nation (PFN, 1976, Obasanjo); Green Revolution Programme (GRP, 1980, Shagari); Directorate of Food, Roads and Rural Infrastructure (DIFRRI, 1986, Babangida); National Agricultural Land Authority (NALDA, 1990, Babangida); National Programme on Food Security (NPFS, 2000, Obasanjo); National Food Security Programme (NFSP, 2003 Yar'Adua); Agricultural Transformation Agenda (ATA, 2011, Jonathan), and the current Agricultural Promotion Policy (APP, otherwise known as Green Alternative). See Gbolagade Babalola, *Essays on Agricultural Economy: Nonexperimental Writings on Agricultural Policy and Development Administration in Nigeria* (Xlibris AU, 2018) at 31

Promotion Policy (2016-2020). However, the Agriculture Promotion Policy notably lacks a human rights framework. Despite mentioning "food as a human right" as a guiding principle, the policy's measures do not reflect this framework.[50] Although the policy focuses on the social responsibility of government regarding food security, social security, and equity, the lack of corresponding government actions has limited its effectiveness.[51] It is therefore suggested Nigeria should formally recognize the right to food as a justiciable human right in its Constitution to ensure that laws and policies inconsistent with the right to food are rendered ineffective.

5.0 INCIDENCE OF OIL SPILLAGE AND ITS IMPACT ON FOOD SECURITY

The incidence and impact of oil spills vary across ecological zones, with a higher frequency of spillages occurring on land compared to swamp and offshore operations. Oil spills constitute a significant form of environmental pollution, resulting in soil degradation, severe health challenges, the destruction of mangrove forests, and the extermination of aquatic life,[52] all of which contribute to food insecurity. The impact of oil spills in the Niger Delta region is particularly concerning, given that Nigerian crude oil is highly toxic.[53] Furthermore, chemical dispersants commonly used in spill clean-up operations exacerbate environmental damage by increasing the solubility of oil, rendering spills less visible but failing to eliminate their toxicity.[54] The long-term consequences of oil spills are profound, as the destruction of vegetation and agricultural land persists due to the obstruction of oxygen supply and the depletion of essential soil nutrients such as magnesium and nitrogen.[55]

When oil spill occurs on water, the hydrocarbons spread rapidly. The gaseous and liquid components evaporate, while some dissolve in the water, oxidize, or undergo bacterial degradation before sinking to the seabed due to gravitational action. This contamination has severe consequences for terrestrial ecosystems. The evaporation of volatile, low-molecular-weight components adversely affects aerial life, while the dissolution of less volatile components, which

[50] Similoluwa Ayoola, Impacts of the Climate and Health Crises on Food Security: Towards Ensuring a Rights-Based Approach to Food Security in Nigeria (A thesis submitted to McGill University, Montreal, in partial fulfilment of the requirements of the degree of Master of Laws, April 2021). 73

[51] See Food and Agriculture Organisation, "The Right to Food, Legal Processes", online: <www.fao.org/right-tofood/areas-of-work/legal-processes/en/> Accessed 12/12/24.

[52] Ibid

[53] L Ayonote, Blood spillage. *TELL*, December 25, 2005, *52*, 20-22.

[54] Ibid

[55] Ibid.

leads to emulsified water, disrupts aquatic ecosystems.[56] Oil spills have devastating effects on vegetation, mangrove forests, food and cash crops, and marine life, thereby reducing the soil's nutrient value and aggravating food insecurity.[57] Studies conducted in the Niger Delta indicate that even minor oil leaks can destroy an entire year's food supply, severely impacting farmers and their families who rely on agriculture for their livelihood.[58]

Birds and mammals are particularly vulnerable to oil spills when their habitats become contaminated, leading to reduced reproductive rates, lower survival rates, and physiological impairments.[59] In aquatic environments, an oil film floating on the water's surface obstructs natural aeration, causing the death of freshwater and marine organisms.[60] On land, oil spills impede vegetation growth and render soil infertile for extended periods, further intensifying food insecurity.[61] The contamination of marine habitats has significant implications for human health, as the consumption of polluted seafood increases the risk of disease.[62] Most farmlands in the Niger Delta region have been affected by oil spill, thereby reducing their fertility. Fertilizer is applied to these farmlands to boost their fertility and where there is a wash-off, nitrates from the fertilizer flow into the water bodies. Research evidence suggests that nitrate contamination is linked to increased risks of cancer, birth defects, thyroid enlargement, and other health disorders, particularly in children.[63]

6.0 THE LEGAL FRAMEWORK GOVERNING OIL POLLUTION IN NIGERIA

As an oil producing country, Nigeria is a signatory to some international conventions prohibiting oil pollution, while also enacting laws geared towards the same purpose. This section shall examine these laws and international treaties.

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[56] EA Akpofure, ML Efere and P Ayawei, The Adverse Effects of Crude Oil Spills in the Niger Delta. Urhobo Historical Society In PC Nwilo & TB Olusegun (*n. 19*) *Ibid*.

[57] CO Opukri and IS Ibaba, Oil Induced Environmental Degradation and Internal Population Displacement in the Nigeria's Niger Delta *Journal of Sustainable Development in Africa*, (2008) 10(1) 184

[58] Damilola S. Olawuyi, Legal and Sustainable Development Impacts of Major Oil Spills *Consilience: The Journal of Sustainable Development* (2012) 9(1) 4

[59] Ibid.

[60] MK Ukoli, Environmental Factors in the Management of the Oil and Gas Industry in Nigeria. (2005). <www.cenbank.org> In A. A. Kadafa, Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria, (2012) 12 (13) *Global Journal of Science Frontier Research Environment & Earth Sciences*, 21.

[61] Ibid.

[62] Y Twumasi, and E Merem , GIS and Remote Sensing Applications in the Assessment of Change within a Coastal Environment in the Niger Delta Region of Nigeria. *International Journal of Environmental Research & Public Health*, (2006) 3(1) 98-106 In Kadafa, ibid.

[63] Ibid

6.1 PETROLEUM ACT CAP P10 LFN 2004

Although the Petroleum Act was enacted primarily to vest ownership of petroleum resources in the state, it also contains general provisions addressing pollution arising from petroleum exploration and development. The Act grants the Minister of Petroleum Resources the authority to halt or suspend any oil operations that, in the Minister's opinion, are not being conducted in accordance with good oil field practices.[64] Additionally, the Minister is empowered to promulgate regulations concerning pollution prevention and safety measures in oil exploration and production activities.[65]

One of the most significant regulations made under the Petroleum Act concerning environmental protection is the Petroleum (Drilling and Production) Regulations 1969, which has been amended in 1973, 1979, 1995, and 1996. These regulations impose a duty on licensees and lessees to maintain all their equipment, boreholes, and wells in good repair and condition. Furthermore, they are required to conduct their operations in a proper and workmanlike manner, adhering to both the regulatory requirements and best practices approved by the Director of Petroleum Resources as constituting good oil field practice.[66]

The Regulations further mandate that lessees and licensees take all practical steps to:

a) Control the flow and prevent the escape or avoidable waste of petroleum discovered or extracted from the relevant area.
b) Prevent damage to adjoining petroleum-bearing strata.
c) Prevent, except in cases of secondary recovery authorized by the Director of Petroleum Resources, the infiltration of water through boreholes and wells into petroleum-bearing strata.
d) Prevent the discharge of petroleum into any water body, including wells, springs, streams, rivers, lakes, reservoirs, estuaries, or harbours.
e) Minimize damage to the surface of the relevant area, as well as to trees, crops, buildings, structures, and other properties within the affected zone.[67]

To ensure compliance with these environmental safeguards, the Minister is vested with the power to revoke oil prospecting licences or oil mining leases where the holder fails to adhere to the

[64] S 8(1)(d) and (g) of the Petroleum Act, Cap P10 LFN 2004
[65] Ibid, S 9
[66] Regulation 36
[67] Ibid

provisions of the Petroleum Act and its accompanying regulations.[68] Pollution of inland water bodies such as rivers, streams, and lakes has severe consequences, particularly for fishing activities, which may be significantly diminished or entirely eradicated. The legal right to engage in fishing has long been recognized and is protected against interference, including pollution. In furtherance of this principle, paragraph 23 of the Regulations provides that:

> "If the licensee or lessee exercises the rights conferred by his licence or lease in such a manner as unreasonably to interfere with the exercise of any fishing rights, he shall pay adequate compensation therefore to any person injured by the exercise of those first mentioned rights."

The right to fish in tidal waters has been reaffirmed in judicial decisions, including the case of ***Elf Nigeria Limited v. Opera Sillo***,[69] where the court awarded compensation to the Sillo family for the loss of their fishing rights. The pollution, caused by an oil spill, resulted in the deposition of silt into the tidal rivers where the family traditionally carried out their fishing activities. This decision emphasizes the legal recognition of fishing rights and the duty of oil operators to prevent environmental damage that disrupts local livelihoods.

The Petroleum (Drilling and Production) Regulations provide for various environmental protections, including safeguards for lands held to be sacred,[70] measures to prevent pollution of watercourses,[71] and regulations on the abandonment and decommissioning of wells.[72] Additionally, the regulations mandate that licensees and lessees maintain accurate records of the quantity of crude oil extracted, stored, and transported.[73] These provisions are intended to enhance accountability and minimize the environmental impact of petroleum operations.

Despite these regulatory safeguards, a major weakness of the Petroleum Regulations lies in their lack of effective enforcement mechanisms. In practice, compliance with the regulations is often disregarded, with violations going largely unpunished. While the regulations are periodically amended to reflect economic changes—such as adjustments in fees, rents, and royalties—there are no well-defined penalties for environmental infractions resulting from breaches of the regulations.

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[68] Regulation 25 of Schedule one to the Petroleum Act, 2004
[69] (1994) 6 NWLR (Part 350) 258. See also *S.P.D.C. V Adamkue* (2003) 11 N.W.L.R. (Part 832) 533
[70] Regulation 17 of Petroleum (Drilling and Production) Regulations 1969
[71] Ibid. Regulation 25
[72] Ibid. Regulation 36
[73] Ibid Regulation 53

Another significant limitation of the regulations is the confidentiality requirement imposed on licensees and lessees regarding the information they provide.[74] This confidentiality clause hinders transparency and public access to critical environmental data, making it difficult to hold oil companies accountable for pollution and regulatory breaches. Strengthening enforcement mechanisms and ensuring greater transparency in the implementation of these regulations would enhance their effectiveness in protecting the environment and the rights of affected communities.
Weak enforcement and lack of transparency in the Petroleum Act and its regulations significantly impact food security in Nigeria. Oil pollution contaminates rivers, farmlands, and fishing areas, which are vital sources of food and income, especially in the Niger Delta. Declining fish populations and degraded farmland reduce food availability and increase poverty. The confidentiality of environmental data limits public accountability and delays necessary action. These regulatory gaps threaten rural livelihoods and nutrition. Enhancing enforcement, cleaning up polluted sites, and improving access to environmental data are essential to protect food sources and ensure community well-being.

6.2 OIL PIPELINES ACT CAP O7 LFN 2004

The Oil Pipelines Act regulates the laying of oil pipelines in Nigeria. Section 4(2) of the Act stipulates that an oil company must obtain a permit from the Department of Petroleum Resources (DPR) before carrying out any survey of a proposed pipeline route or engaging in the actual construction of oil pipelines. This requirement establishes that an oil company can only proceed with pipeline installation after securing the necessary governmental authorization.
A significant limitation of the Act is that oil-producing communities, whose farmlands and livelihoods are directly impacted by oil pipeline projects, have no legal authority to either grant permission for or object to the laying of oil pipelines on their land. Their participation is restricted to raising claims and objections concerning specific categories of land, including:

(2) Land occupied by a cemetery.
(3) Land containing a grave, tree, or object deemed sacred or venerated; and
(4) Land under actual cultivation.

[74] Ibid Regulation 58

Furthermore, the Act imposes a duty on holders of oil pipeline licenses to pay compensation to any person whose land or interest in land—whether the land falls within the specific area covered by the license—is adversely affected by the exercise of the rights conferred by the license. Compensation is to be provided for any injuries sustained because of pipeline operations that have not been adequately remedied.[75] While the Act provides a mechanism for compensation, its failure to recognize the full extent of community participation in the decision-making process remains a significant shortcoming. Strengthening the legal framework to ensure that host communities have a more substantive role in approving or objecting to pipeline projects would enhance environmental justice and protect the rights of affected individuals. Another weakness in this Act is that it attaches more importance to payment of monetary compensation than environmental protection and pollution prevention.

The gaps in the Oil Pipelines Act directly affect food security in Nigeria by side-lining the rights of host communities whose farmlands are used for pipeline projects. Since the law does not require community consent before pipelines are laid, oil companies can construct pipelines through cultivated lands without adequately assessing the long-term impact on food production. This often leads to soil degradation, crop destruction, and repeated oil spills that contaminate fertile farmland and water sources essential for irrigation and fishing.

Moreover, the Act prioritizes monetary compensation over environmental protection, offering payment after damage has occurred rather than preventing pollution. Compensation rarely reflects the true value of lost food sources or long-term soil and water contamination. As a result, farming and fishing communities, especially in oil-producing areas like the Niger Delta, face reduced agricultural productivity and limited access to safe food and water—key drivers of local food insecurity.

6.3 OIL IN NAVIGABLE WATER ACT CAP O6 LFN 2004

The Act was enacted in compliance with Nigeria's adoption of the International Convention for the Prevention and Control of Pollution of the Sea by Oil. It represents the first legislation in Nigeria that specifically and exclusively addresses industrial waste generated by oil production.[76]

[75] Section 11(5) (a) of the Oil Pipelines Act.

[76] CC Nwufo, Legal Framework for the Regulation of Waste in Nigeria, *African Research Review*, (April 2010) 10(2) 499

Under the Act, the discharge of oil into a prohibited sea area constitutes an offence and the owner or master of any ship responsible for such discharge is deemed guilty of an offence.[77] Similarly, where oil or any mixture containing oil is discharged into the sea within Nigeria's territorial waters, whether from a vessel, land-based facility, or apparatus, the owner or person in charge is also guilty of an offence.[78]

A notable weakness of the Act, however, is that the penalties prescribed for offences under its provisions are grossly inadequate.[79] The absence of stringent punitive measures undermines the deterrent effect of the law, allowing offenders to escape with minimal consequences. Strengthening the penalties under the Act would enhance its effectiveness in regulating oil pollution and ensuring greater compliance with environmental protection standards.

The weak penalties in the Oil in Navigable Waters Act reduce its deterrent effect, allowing continued oil discharges into Nigeria's territorial waters. This directly harms food security by polluting coastal and inland water bodies where fishing is a major source of protein and livelihood. Contaminated waters lead to fish kills, reduced fish populations, and bioaccumulation of toxins in seafood, making them unsafe for consumption. Communities that rely on artisanal fishing for food and income—especially in the Niger Delta—suffer from declining catch volumes and food contamination. Without stricter enforcement, these vital food sources remain at risk.

6.4 NATIONAL OIL SPILLS DETECTION AND RESPONSE AGENCY (NOSDRA) ACT 2006

The National Oil Spill Detection and Response Agency (NOSDRA) was created under Act No. 15 of 2006 as the Federal Government's strategic measure to combat ongoing environmental degradation, particularly in Nigeria's oil-producing coastal areas like the Niger Delta. NOSDRA's core mandate includes overseeing oil spill response efforts and ensuring the effective implementation of the National Oil Spill Contingency Plan (NOSCP), developed in line with the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) 1990, which Nigeria is a signatory to.[80] The NOSCP, initially formulated in 1981 and revised in 1997,

[77] Section 1 Oil in Navigable Waters Act, CAP O6 LFN 2004
[78] Ibid Section 3
[79] Ibid Section 6
[80] Nigeria's report on Rio +20 (2012).

2000, and 2006, outlines procedures for oil spill containment, clean-up, and site restoration, incorporating both evolving local challenges and global best practices.

NOSDRA is mandated to take the lead role in ensuring timely, effective, and appropriate responses to all oil spills, protecting threatened environments, and ensuring the clean-up of affected sites to the best practical extent.[81] The Act further provides for the establishment of a National Control and Response Centre, responsible for coordinating oil spill incidents, enforcing environmental legislation, monitoring oil spill detection and responses, and receiving reports from zonal offices and control units.

Despite this mandate, NOSDRA faces significant operational challenges. In many cases, oil spill investigations are led by oil companies rather than the agency. NOSDRA does not initiate independent oil spill investigations and is often dependent on the polluting oil company for logistics, including transportation to spill sites and technical data.[82] Furthermore, joint investigation processes are heavily influenced by the oil companies, which determine the timing of site visits, provide transportation, and control technical assessments.[83] This imbalance in power creates a conflict of interest, as the polluter has significant influence over the investigative process and information flow.

A poorly equipped regulatory agency like NOSDRA has little choice but to operate within these constraints. As Ayobami has argued, monitoring agencies such as NOSDRA require adequate funding and technical expertise to effectively manage oil spill incidents.[84] If properly equipped and funded, NOSDRA can function more effectively as a regulatory agency, ensuring strict compliance with environmental laws and holding polluters accountable. Strengthening NOSDRA's operational capacity would significantly enhance Nigeria's environmental governance framework in the oil sector.

The gaps in the NOSDRA Act negatively impact food security in Nigeria by allowing oil companies to dominate spill investigations and delay clean-up efforts. This leads to prolonged contamination of farmlands, rivers, and fishing grounds, which are primary food sources for rural

[81] Section 5 of the NOSDRA Act 2006

[82] A Olaniyan, 'The Multi-Agency Response Approach To The Management Of Oil Spill Incidents: Legal Framework For Effective Implementation In Nigeria', *Afe Babalola University Journal of Sustainable Development, Law*, (2015) 6(1) 114.

[83] Ibid

[84] A Olaniyan, 'Imposing Liability for Oil Spill Clean-Ups in Nigeria: An Examination of the Role of the Polluter-Pays Principle', *Journal of Law, Policy and Globalization* (2015) 40, 84

communities in the Niger Delta. With NOSDRA lacking independence, funding, and technical capacity, polluted sites remain unrestored, reducing crop yields, killing fish, and introducing toxins into the food chain. These outcomes directly diminish local food availability, compromise nutrition, and threaten livelihoods dependent on farming and fishing.

6.5 NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY (NESREA) ACT CAP N164 2010

The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act is Nigeria's primary environmental law, establishing NESREA as the agency responsible for enforcing environmental laws, regulations, and standards. NESREA's mandate includes deterring individuals, industries, and organizations from polluting and degrading the environment, promoting biodiversity conservation, and ensuring the sustainable development of Nigeria's natural resources.[85] Additionally, the agency is tasked with coordinating and liaising with relevant stakeholders, both within and outside Nigeria, on matters related to the enforcement of environmental policies and guidelines.

NESREA has broad powers to enforce compliance with all environmental laws, guidelines, policies, standards, and regulations in Nigeria. It is also responsible for ensuring adherence to international environmental agreements, protocols, conventions, and treaties to which Nigeria is a signatory.[86] One of its key regulatory functions is the prohibition of the discharge of hazardous substances in harmful quantities into the air, land, or waters of Nigeria, including the adjoining shoreline, unless such discharge is authorized by law.[87] The Act prescribes penalties for violations. Individual offenders may be fined up to N1,000,000 or imprisoned for up to five years.[88] Corporate entities are liable to a fine of up to N1,000,000, with an additional penalty of N50,000 for each day the offence continues.[89] Any person in charge of a corporate body at the time of the offence is also deemed guilty and may face prosecution unless they can prove lack of knowledge or that they exercised due diligence to prevent the violation.[90] Additionally, obstructing a NESREA officer in the performance of official duties carries penalties, including a fine of N200,000 or imprisonment

[85] Section 2 NESREA Act
[86] Ibid. section 7(c)
[87] Ibid, s. 27 (1)
[88] Ibid, s. 27 (2)
[89] Ibid, s. 27 (3)
[90] Ibid, s. 27 (4)

for up to one year, with an additional fine of N20,000 per day if the offence persists. Corporate offenders face a fine of N2,000,000, plus N200,000 for each day the violation continues.[91]

Despite its broad mandate, the NESREA Act has limited application in the petroleum sector. Unlike its predecessor, the Act largely excludes oil and gas operations from its regulatory scope.[92] While NESREA retains the authority to enforce compliance with environmental standards, regulations on water quality, pollution abatement, and environmental health,[93] its functions carefully sidestep direct regulation of the oil and gas industry—despite the fact that this sector is a major contributor to environmental pollution in Nigeria.[94] This regulatory gap raises concerns about the Act's effectiveness in addressing environmental degradation caused by petroleum exploration and production activities. The NESREA Act excludes the NESREA from enforcing compliance within the oil and gas industry. The NESREA also do not have jurisdiction to regulate oil and gas activities resulting in noise, air, seas and other water bodies' pollution. They also lack capacity to control measures such as registration, licensing, and permitting systems in the oil and gas industry or conduct environmental audits in the oil and gas industry.

The exclusion of the National Environmental Standards and Regulations Enforcement Agency (NESREA)—an agency responsible for sustainable development, biodiversity conservation, environmental protection, and the advancement of environmental technology—from enforcing compliance in the oil and gas sector has been widely criticized. This regulatory gap has been described as a "deeply questionable move that further entrenches government failures to ensure effective oversight of the oil industry and to protect the environment and human rights."[95] This cap placed on NESREA's authority over the petroleum sector by the government has effectively weakened its ability to hold oil companies accountable for environmental degradation.

The exclusion of NESREA from regulating the oil and gas sector weakens oversight of oil-related pollution, allowing unchecked contamination of farmlands, rivers, and fishing grounds—key sources of food and income in rural Nigeria. Without NESREA's enforcement, spills and toxic discharges persist, leading to reduced crop yields, fish kills, and long-term soil and water

[91] Ibid, s. 31.
[92] A Tanko, *An Analysis of the Efficacy of Fiscal Laws relating to Petroleum Operations in Nigeria*, (Unpublished thesis: Ahmadu Bello University, Zaria, Nigeria, 2011) 120
[93] Section 7(a), (b), (c), (d), (e), (f),(i) and (m) of the NESREA Act
[94] A. Tanko (n.92) ibid
[95] Amnesty International Report, June 2009, p. 43

degradation. This directly undermines food production, reduces local food availability, and heightens hunger and malnutrition, especially in the Niger Delta.

7.0 INSTITUTIONAL FRAMEWORK FOR PROTECTION AGAINST OIL SPILLS

Apart from the laws that directly or indirectly provide for penalties against oil pollution, there are certain institutions that work to ensure the implementation of those laws. Some of the institutions will be examined to see how well they have carried out their functions.

7.1 THE FEDERAL MINISTRY OF ENVIRONMENT

The Federal Ministry of Environment (FME) was created in 1999 to replace FEPA.[96] The Ministry was established to ensure effective coordination of all environmental matters, which hitherto were fragmented and resident in different Ministries.[97] Its creation was intended to ensure that environmental matters are adequately mainstreamed into all developmental activities.[98] The Ministry is responsible for establishing a National Policy aimed at safeguarding the environment and preserving natural resources. This includes conducting environmental impact assessments for all development projects, as well as formulating periodic master plans to advance environmental science and technology.[99]

The Vision of the Ministry is to ensure that Nigeria develops in harmony with the environment, while the Mission is to ensure environmental protection and natural resources conservation for sustainable development".[100] The main function of the Ministry revolves around the following key environmental issues, especially, in the area of policy awareness, enforcement and intervention: Desertification and Deforestation; Pollution and Waste Management; Climate change and clean Energy; Flood, Erosion and Coastal Management (Shoreline Protection); and Environmental Standards & Regulations.[101] The Ministry also has the following parastatals: Environmental Health and Registration Council of Nigeria (EHORECON); Forestry Research Institute of Nigeria (FRIN); National Bio-safety Management Agency (NBMA); National Environmental Standards

[96]Federal Ministry of Environment. Federal Ministry of Information. Retrieved on August 20, 2013, from http://www.nigeria.gov.ng/2012-10-29-11-06-51/executive-branch/94-federal-ministry-of-environment/182-federal-ministry-of-environment.
[97] Ibid
[98] Ibid
[99] Ibid
[100] Federal Ministry of Environment. <https://euepin.unilag.edu.ng/?page_id=913>. Accessed 13/6/2021
[101] Ibid

Regulatory and Enforcement Agency (NESREA); National Agency for the Great Green Wall; National Oil Spill Detection and Response Agency (NOSDRA); National Parks Service (NPS).[102]It also cooperates with other relevant stakeholders.

Corruption and bad governance prevalent in the country affect the ministry in enforcement of environmental laws. Some owners and operators of the facilities fight back ministry officials using blackmail and/or intimidation.[103] Another major challenge of enforcement of laws against oil pollution is lack of modern technology. Till date, officers monitoring the environment do not have the effective modern equipment to enhance monitoring of some of the pollution incidents.[104]

FME's weak enforcement of environmental laws and inability to monitor pollution due to corruption and inadequate technology allows environmental degradation to persist unchecked. This includes land degradation, desertification, deforestation, and pollution of water bodies. These environmental issues directly reduce the quantity and quality of arable land and freshwater available for farming, leading to lower agricultural productivity and threatening food security, especially in rural and agrarian communities.

7.2 NATIONAL OIL SPILLS DETECTION AND RESPONSE AGENCY (NOSDRA)[105]

The National Oil Spill Detection and Response Agency (NOSDRA) was created under Act No. 15 of 2006 as a strategic initiative by the Federal Government to address the ongoing environmental damage and destruction of coastal ecosystems, particularly in the oil-rich Niger Delta region. NOSDRA is legally mandated to oversee oil spill response efforts and enforce the National Oil Spill Contingency Plan (NOSCP) in compliance with Nigeria's commitment to the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) of 1990.[106] The National Oil Spill Contingency Plan (NOSCP) serves as a strategic framework for managing oil spills by outlining measures for containment, recovery, and environmental remediation. Initially developed in 1981, the plan underwent revisions in 1997, followed by subsequent updates in 2000 and 2006 to enhance its effectiveness.

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[102] Ibid

[103] MT Ladan, *Law of Environmental Protection*. (Caltop Publications Nigeria Limited, 1998).

[104] H Ijaiya, & OT Joseph, 'Rethinking Environmental Law Enforcement in Nigeria'. (2014) *Beijing Law Review,* 315. <http://dx.doi.org/10.4236/blr.2014.54029>. Accessed 22/05/2018

[105] National Oil Spills Detection and Response Agency (NOSDRA) Act, CAP N157 LFN 2010

[106] Nigeria's report on Rio +20 (2012).

As its core mandate, NOSDRA is tasked with spearheading prompt, efficient, and well-coordinated responses to oil spill incidents. The agency works to safeguard vulnerable ecosystems while ensuring comprehensive remediation of affected areas to the fullest extent possible.[107] However, in many cases, it is observed that oil companies' personnel usually lead oil spill investigations and NOSDRA does not initiate oil spill investigations.[108] The agency is thus seen to be dependent on the company involved in an oil spill incident, whether it involves conveying NOSDRA staff to oil spill sites or supplying technical data about spills. Furthermore, the process of joint investigation is heavily reliant on the oil companies. The oil companies often decide when the investigation will take place, they usually provide transport to the site and they provide technical expertise, which the regulatory agencies such as NOSDRA and the DPR do not have.[109]

NOSDRA's dependence on oil companies for logistics and data, and its weak role in initiating independent oil spill investigations, leads to delayed or poor oil spill responses. This results in prolonged contamination of farmlands, rivers, and fishing grounds, especially in the Niger Delta. The destruction of soil fertility and aquatic life reduces both crop and fish production, which undermines local livelihoods and food availability in one of Nigeria's key agricultural and fishing regions.

7.3 NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY (NESREA)[110]

The National Environmental Standard and Regulations Enforcement Agency (NESREA) Act is the major environmental law in Nigeria. The agency is charged with the responsibility of enforcing environmental laws, regulations and standards in deterring people, industries and organizations from polluting and degrading the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of

[107] Section 5 of the NOSDRA Act 2006
[108] A Olaniyan, 'The Multi-Agency Response Approach To The Management Of Oil Spill Incidents: Legal Framework For Effective Implementation In Nigeria', *Afe Babalola University Journal of Sustainable Development, Law*, (2015) 6(1) 114.
[109] Ibid
[110] National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2018 (as amended)

enforcement of policies and guidelines.[111] NESREA also has responsibility to enforce all environmental laws, guidelines, policies, standards and regulations in Nigeria, as well as enforce compliance with the provisions of all international agreements, protocols, conventions and treaties on the environment to which Nigeria is a signatory.[112]

With respect to NESREA, a major challenge is that the agency is excluded from the activities of the Nigerian oil and gas industry. Section 7 and 8 of the NESREA Act provides for the powers and functions of the agency. However, these sections also provide exceptions in five of its thirteen provisions, requiring the Agency to:

1. Enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste *other than in the oil and gas sector*;[113]
2. Enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies *other than in the oil and gas sector*;[114]
3. Create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations *other than in the oil and gas sector* and publish general scientific or other data resulting from the performance of its functions.[115]
4. Conduct public investigations on pollution and the degradation of natural resources, *except investigations on oil spillage*,[116]
5. Submit for the approval of the Minister, proposals for the evolution and review of existing guidelines, regulations and standards on environment *other than in the oil and gas sector* including atmospheric protection, air quality, ozone depleting substances, noise control, effluent limitations, water quality, waste management and environmental sanitation, erosion and flood control, coastal zone management, dams and reservoirs, watershed, deforestation and bush burning, other forms of pollution and sanitation, and control of hazardous substances and removal control methods;[117]

[111] Section 2 NESREA Act 2018 (as amended)
[112] Ibid section 7(c)
[113] Section 7(g) NESREA Act 2018 (As amended)
[114] Ibid Section 7(h)
[115] Ibid Section 7(l)
[116] Ibid Section 8(g)
[117] Ibid Section 8(k)

6. Develop environmental monitoring networks, compile and synthesize environmental data from all sectors *other than in the oil and gas sector* at national and international levels.[118]

The implication of the above provisions is that the agency is barred from enforcing hazardous waste regulations in the oil and gas sector. The Agency cannot monitor, license, research, survey, study, or audit the sector. It may not propose evolution of the environmental regulations for, promote compliance in, or conduct investigations of the oil and gas sector. Thus, while the Agency is technically allowed to 'enforce compliance with laws, guidelines, policies and standards on environmental matters' it may not observe the oil and gas sector in any way to determine the level of compliance by stakeholders.[119] The effects of these exemption provisions are that the supposed environmental regulator in Nigeria has no legal basis or power to investigate and punish environmental default in Nigeria's oil and gas sector.[120] This has been a major barrier to victims of oil pollution in the Niger-Delta who are faced with the brazen reality that NESREA may not provide any haven after all. They are therefore left with one major option: to go to court and seek redress. Another major problem of the Agency is that many of the staff employed by the agency to carry out technical roles are not trained.[121] The above listed defects prevent NESREA from carrying out her duties effectively.

NESREA's legal exclusion from monitoring and regulating the oil and gas sector prevents it from controlling pollution from one of Nigeria's largest and most environmentally harmful industries. Hazardous waste, oil spills, and gas flaring continue without proper oversight, contaminating land and water resources essential for agriculture and fisheries. Furthermore, the lack of technically trained personnel impairs NESREA's performance even in sectors it is empowered to regulate, leading to unchecked pollution that disrupts ecosystems and food chains.

7.4 DEPARTMENT OF PETROLEUM RESOURCES (DPR)

The Department of Petroleum Resources (DPR) is an arm of the Ministry of Petroleum. The department supervises all petroleum industry operations carried out under licenses and leases in

[118] Ibid Section 8(l)

[119] RA Mmadu, 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from *Kiobel' Afe Babalola University: Journal Of Sustainable Development Law And Policy*, (2013) 2(1) 152

[120] Ibid

[121] NF Stewart, 'A Roadmap for the Effective Enforcement Of Environmental Laws In Nigeria' (2011) 2 *National Environmental Law Review*, (2011) 2, 48.

Nigeria to ensure compliance with the applicable laws and regulations in line with best oil producing practice and standards.[122] THE DPR produces the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN). Revised in 2002 from the original 1991 version, EGASPIN is designed to minimise oil pollution.[123] It also sets out the approach to be adopted regarding contamination of the soil and groundwater, with the person responsible for the contamination required to restore the soil and groundwater to appropriate safety levels under threat of fines, potential imprisonment and loss of a license.[124]

The challenges besetting the DPR include lack of expertise and manpower to carry out its functions. Equally, there is a conflict in the responsibilities of the DPR and the National Oil Spill Detection and Response Agency (NOSDRA). NOSDRA appears to be responsible for monitoring all oil pollution and the process of detecting it and ensuring that it is cleared up. Both agencies appear to claim this role.[125] As a regulator with licensing powers, the DPR has an obvious function here, while NOSDRA obviously cannot respond to emergencies if it could monitor them.

DPR's limited expertise and manpower, combined with overlapping responsibilities with NOSDRA, create enforcement gaps in controlling pollution from oil operations. The ineffective implementation of EGASPIN means that soil and water contamination is not properly addressed. Polluted farmlands and poisoned water bodies lead to reduced crop yields and fish kills, especially in the Niger Delta, which threatens both food availability and access for millions who depend on these ecosystems for sustenance.

8.0 CONCLUSION AND RECOMMENDATIONS

This paper has explored the link between oil pollution and food security in Nigeria, highlighting the failure of existing legal and institutional frameworks. Although laws like the Petroleum Act, NOSDRA Act, and Oil Pipelines Act provide for environmental protection, enforcement is weak due to vague penalties, poor oversight, and overlapping mandates. Critically, NESREA is excluded from regulating the oil and gas sector, while NOSDRA lacks independence and resources, making

[122] Organization Roles. About DPR. http://www.dprnigeria.com/dpr_roles.html. Accessed 20/6/21

[123] Chris Cragg, Joseph Croft and Inemo Samiama, 'Environmental Regulation and Pollution Control in the global oil industry in relation to reform in Nigeria' being a Report prepared by Stakeholders Democracy in Nigeria (SDN) 2014

[124] Ibid

[125] Ibid

it reliant on polluters for investigations. The Federal Ministry of Environment and DPR also struggle with corruption, outdated tools, and internal conflicts. These gaps enable unchecked pollution, leading to infertile soils, poisoned water bodies, and collapsing food systems, especially in the Niger Delta. Without urgent legal and institutional reforms, oil pollution will continue to threaten food security and the livelihoods of vulnerable communities. It is hereby recommended as follows:

i. There is need to amend the Petroleum Act, NOSDRA Act, and Oil Pipelines Act to provide stricter penalties for environmental violations and remove confidentiality clauses that shield polluters from public scrutiny. The International Covenant on Economic, Social and Cultural Rights (ICESCR) should also be domesticated to make the right to food legally enforceable in Nigeria.

ii. There is need to grant full regulatory powers to NESREA over the oil and gas sector to enable independent monitoring, licensing, and enforcement, while ensuring that NOSDRA is adequately funded and operationally independent, with the capacity to conduct autonomous oil spill investigations.

iii. It is important to legally recognize and enforce the participation rights of host communities in pipeline approvals and environmental assessments. The government at all levels should also support and legalize the formation of independent environmental watchdogs and community-led oil spill monitoring initiatives.

iv. There is need to establish an Environmental Remediation Fund, financed by oil companies, for cleaning polluted lands and water bodies and compensating affected communities. In addition, alternative livelihoods through sustainable agriculture, aquaculture, and climate-resilient farming practices, especially in oil-polluted areas should be promoted.

v. The law makers should enshrine the right to food as a justiciable human right in the Nigerian Constitution to ensure citizens can seek redress when their access to food is undermined by environmental pollution.